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Children, Contact and Domestic Abuse

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PhD in Social Policy

The University of Edinburgh

2014

Declaration

I declare that this thesis is of my own compositions, based on my own work, with acknowledgments of other sources, and has not been submitted for any other degree of professional qualification.

Fiona Morrison

Date.....

Word count: 87105

Acknowledgments

Most of all I would like to thank the children and women who took part in this research. I feel incredibly privileged that you chose to share your experiences and views with me.

Thank you to my supervisors Professor Kay Tisdall and Dr Anne Stafford. You showed endless patience, wisdom and enthusiasm towards my research and towards me.

Thank you to the ESRC and Scottish Women's Aid for supporting this research. A special thank you to Dr Cheryl Stewart. You have been incredibly kind and understanding throughout this whole endeavor.

Emma, Valeria, Mo, Christina & Fiona – thank you for your company these last few years. I couldn't have asked to make nicer friends than you during the course of my PhD.

Mum, Dad, Michael and Theresa – thank you for the free childcare that you so willingly gave! You have made finishing this thesis a possibility. A special thank you to Michael for your help with proof reading.

Thank you to Kevin. You have been lovely throughout this seemingly never-ending project. Without your support this really would not have been possible. Hopefully we now will get our evenings, weekends and holidays back!

A final thank you goes to my beautiful boy Joseph. You have taught me to keep perspective and you have not allowed me to drown in my PhD.

Abstract

In recent years the issue of children's contact with non-resident parents has been increasingly debated. The policy gaze has focused on contested contact when there are allegations of domestic abuse. Some commentators argue that in circumstances of domestic abuse, contact with an abusive father may not be in the 'best interests' of the child. To support these claims they point to evidence that domestic abuse adversely affects children, and domestic abuse often continues following separation. Children's views of contact in circumstances of domestic abuse remain under-researched, as such their views on this issue have been missing from policy debates.

The research aims to uncover how children view and experience contact with non-resident fathers when in the context of domestic abuse. A qualitative methodology was developed for the research. In-depth interviews were carried out with both children and their mothers.

The findings confirm that conceptualisations of domestic abuse that focus on discrete acts or incidents of violence do not correspond with children's and mother's accounts of abuse. Domestic abuse was a constant in the lives of children and mothers. Children were exposed to domestic abuse before and following parental separation. The research uncovers the complex negotiations children make when family relationships are characterised by abuse. Children identified domestic abuse as a core issue when forming views about contact with their fathers. They tried to make sense of and developed their own analysis of their fathers' abuse and strategies to cope with it. Children also highlighted a range of issues beyond domestic abuse that influenced their views about contact.

The role children should have in disputes about contact is contested. Children may be considered incompetent to form a view or their views are constructed as a product of parental manipulation. The research provides insights into children's experiences of participating in contact disputes. It points to limitations in current Scottish legal

mechanisms that are designed to take children's views into account and questions the respect afforded to children's participation in disputes. The thesis concludes by highlighting the theoretical, policy and practice implications that result from this research.

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Introduction

1 The purpose of the research

The overall aim of this research is to examine children's views and experiences of contact with non-resident fathers when there is domestic abuse. The thesis is informed by data gathered from children themselves, and from their mothers. In last two decades there has been a growth in research on children's exposure to domestic abuse; this has incorporated research with children on their own experiences and perspectives of domestic abuse (e.g. Mullender, 2002; McGee, 2000; Stafford, 2007). Research with children has highlighted that they have their own perspectives on domestic abuse. To date there has been little academic work addressing the specific issue of children's experiences of contact with their fathers following parental separation when there is domestic abuse and this thesis set out to address this gap.

Recent research provides new information about how women remain at risk of domestic abuse even after separation from abusive partners (Thiara and Gill, 2012; Stanley et al., 2011; Hester and Radford, 1996; Hester et al., 1996). My work also takes account of this and relates it to children's experiences of separation and on-going contact with fathers. These ideas act to reinvigorate debates on how domestic abuse is defined and conceptualised (Johnson, 2006; Stark, 2007; Pain, 2012) and the adequacy of service and family law responses to it (Hester, 2011; Morrison et al., 2013).

In Scotland pressure from lobby groups like Scottish Women's Aid, led to an amendment being made to the Children (Scotland) Act 1995 by the Family Law (Scotland) Act 2006. The amendment was made to Section 11 of the Act, the legislation that enables courts to make orders that regulate parental responsibilities and rights. This elevated the profile of domestic abuse in parental disputes about contact. Section 11 (7A-C) of the Children (Scotland) Act 1995 now requires courts to consider the need to protect the child from any abuse or risk of abuse, the effects

of such abuse, and the ability of the person to care for or meet the needs of the child when weighing a child's best interests when making contact orders. The type of abuse that courts are required to consider includes domestic abuse. The inclusion of domestic abuse, as a particular issue to consider when weighing a child's best interests, marks a departure in Scots law. Until this point, Scots law had resisted any 'checklist' approach to weighing a child's best interests.

Alongside these research and legal developments on domestic abuse has been a greater focus on children's participation in family law. In the nineties a flurry of research focused on children's views and experiences of participating in decisions when parents separate and divorce (e.g. Neale and Smart, 1998; Tisdall et al, 2002). The focus on children's participation in family law can be traced to Article 12 of the United Nations Convention on the Rights of the Child. It sets out requirements for children's views to be given due weight in all matters that affect their lives. Scottish domestic legislation is described as being the most 'positive' UK legislation for children's participation (Tisdall and Morrison, 2012: 158). Although largely unknown, Section 6 of the Children (Scotland) Act 1995 requires those with parental rights and responsibilities when making any 'major decision' about a child's life to consider the child's views. This requirement exists for decisions that occur in and out of court. Furthermore if a case reaches court, there is a range of ways that children can participate in the case.

The research aims to bring together the two areas of domestic abuse and family law, in its examination of children's views and experiences of contact when there is domestic abuse. The research addresses the following questions:

- What influences children's views about contact with non-resident fathers?
- What perspectives do children have on participating in parental disputes about contact?
- How do children experience contact in a context of domestic abuse?
- In what ways are children exposed to domestic abuse before and following separation?

2 Background to the research

The research is the result of a CASE studentship funded by the Economic and Social Research Council and Scottish Women's Aid. Before the research began, I worked at Scottish Women's Aid as a Children's Policy Worker. While not directly involved in the campaigning for the amendment to the Children (Scotland) Act 1995, I was involved in the organisation's work around children's issues generally and promoting children's participation in policy and research specifically. During this time I completed an MSc in Childhood Studies at the University of Edinburgh. As part of this, I undertook a small-scale qualitative research project with children about contact and domestic abuse. My interest in the area at this point had been sparked by the recent changes in law. Following the MSc, I felt that I was left with more questions than answers about child contact and domestic abuse. I was keen to have greater clarity on the legal position about contact when there is domestic abuse and the role children's views have in disputes about contact. I wanted to research in greater depth children's own views and experiences of these issues and wanted to expand my experience and skills in researching sensitive topics with children. This was driven by a sense, that at times, children were excluded from research out of concern that it may be too upsetting for them. While this may be the case in some circumstances, a blanket rule about not researching sensitive or difficult issues can mean that children's views and experiences are excluded from policy, practice and legal debates (Alderson and Morrow., 2004).

3 Informed by a child's rights perspective

This research has been informed by a children's rights theoretical perspective. This derived from the legal framework in Scotland. It was also in response to the contested and adversarial nature of contact. Family law deals with disputes about contact as 'parental' disputes; this runs the risk of the discourse about contact being framed by ideas of parental rights and interests at the expense of children's rights. This has been apparent in the campaigning efforts of fathers' rights groups (e.g.

Flood, 2010; Jaffe and Crooks, 2004). By adopting a children's rights perspective the research retains a clear focus on children.

The nature of domestic abuse adds to the reasons why a focus on children's rights brings an illuminating perspective. In circumstances of domestic abuse, the non-abusing parent's and the child's interests are linked and overlap. Critics argue that the most effective way to protect children from domestic abuse is to protect women from domestic abuse (e.g. Mullender and Morley, 1994; Debbonaire and Mullender, 2000). However, this overlap between children and women's interests may risk their different interests being conflated and presented as the same entity. Undoubtedly children and women's interests can become enmeshed in cases of contact, particularly when contact provides opportunity for abuse to continue. Like Woodhouse (1993), I argue that a child's rights perspective does not necessarily ignore this and may potentially accommodate these ideas. Woodhouse states that emphasising the interests of children does not necessarily neglect the interests of parents. The interests and needs of parents are highly relevant to any consideration of children's interests. However an important distinction is that parents' interests are viewed through the prism of children's interests not the reverse.

4 Summary of the thesis

Having set the context for the thesis, this section now provides an outline for the rest of the thesis.

Chapter two, *A Review of Legislation, Theory and Case Law*, provides an overview of the Scottish legal instruments that address disputed contact. From this, the chapter identifies key theoretical concepts that are important for the study: children's best interests, children's views and conceptualisations of domestic abuse. There is a discussion about key literature on these concepts. The chapter concludes by critically reviewing Scottish case law on: children's best interests, children's views and conceptualisations of domestic abuse. It discusses how these are understood and applied in law and the implications that these have.

Chapter three, *Review of the Literature on Contact, Children and Domestic Abuse*, reviews the research on why child contact is important and considered beneficial to children following parental separation. The chapter narrows its gaze to contact in the specific circumstances of domestic abuse. It reports on how the ending of the relationship does not equate with the ending of domestic abuse. It brings to the fore how children are exposed to domestic abuse and the impact this may have on children. The chapter concludes by drawing out key findings from the limited research that has been undertaken with children about their experiences of contact with non-resident fathers in circumstances of domestic abuse.

Chapter four, *Research Methodology*, provides an account of the methodology used for the research. The chapter describes the research strategy that was used and the rationale for this. A reflexive account is given about the research tools used and how ethical issues were addressed. Attention is also given to how data were analysed and written up. The chapter concludes by highlighting the limitations of the methodology and points to issues that future research in this area might grapple with.

Chapter five, *Domestic abuse before parental separation*, is the first of four analysis chapters. The chapter casts light on lived experiences of domestic abuse. Drawing predominantly from the accounts of women, this chapter seeks to anchor the subsequent findings chapters on contact to the relationship histories of the women and children who participated in the research. This chapter's importance derives from tendencies in family law to abstract the history of domestic abuse from relationships. The chapter seeks to make explicit what domestic abuse is and how children are exposed to it.

Chapter six, *Children's views of contact with their fathers when there is domestic abuse*, reports on the issues children identified as important when considering contact with their father. It reflects on the complexities of children's relationships with their fathers. There is discussion about the influence domestic abuse has on children's views and the implications that this may have on how children's views are interpreted and treated. It also reports on a range of other issues separate to domestic

abuse that children identified as important to their views on contact with their fathers.

Chapter seven, *Children's participation in decisions about contact with non-resident fathers*, looks more closely at the legal and non-legal routes taken to make decisions about contact. It sets out the contact histories that children and their fathers had, highlighting the complexity and fragility of contact arrangements. Particular attention is given to children's views on participating in decisions about contact. The chapter concludes by using children's perspectives to critique Scottish legal mechanisms designed to take children's views in contact disputes.

Chapter eight, *Experiences of contact when there is domestic abuse*, is the final analysis chapter. It examines the ways in which domestic abuse continues following separation and the connections post-separation parenting arrangements had to this. The chapter underlines how the consequences of domestic abuse affect parental relationships following separation, which in turn have significant repercussions for children's contact.

The thesis ends with the chapter *Discussion and Conclusions*. This chapter provides an overview of key findings and wider contributions that this work has made. It ends with my own reflections on policy, methods and areas for future research.

5 Notes on terminology

Children

The research was concerned with children aged between 8-14 years. I have used the term child or children throughout the thesis. I have used this terminology rather than young people as it follows the legal definition used in the Children (Scotland) Act 1995. This seems particularly appropriate given the socio-legal nature of the research.

Women, mothers, men and fathers

During the thesis the terms women, mothers, men and fathers are used. The terms mothers and fathers are used when the discussion focuses on the relationship or connection with children. The terms women and men are used when the relationship or connection with children is not the focus of the discussion.

Describing experiences of domestic abuse

The language and terminology used to describe experiences of domestic abuse is varied and can be contentious. During the thesis a range of terminology is used this reflects the context of the discussion. At times the phrases ‘victims’ and ‘perpetrators’ are used, this tends to be when the abuse is connected to a criminal incident. Both the terms ‘experience’ and ‘exposure’ to domestic abuse are used to refer to children’s experiences of domestic abuse.

Conflict, disputes and domestic abuse

Feminist perspectives on domestic abuse highlight the importance of ideas about responsibility when discussing domestic abuse. They argue that the language used to refer to domestic abuse is important: it sets the tone for how it is understood. In family law the terms ‘conflict’ and ‘disputes’ are often used to describe family actions about contact. These terms suggest mutuality and may obscure what domestic abuse is. In the thesis I have tried to restrict the uses of the term ‘disputes’ to only refer to legal actions and not to describe the relationship between men and women.

Review of legislation, case law and the literature

1 Introduction

This chapter sets the legal and theoretical context for the study. It is split into three parts. It begins by reviewing the Scottish legislation that resolves parental disputes about child contact. From the review of legislation three theoretical concepts are identified as important for this study. These are: ‘best interests’, ‘children’s views’ and ‘conceptualisations of domestic abuse’. The second part of the chapter briefly summarises key literature and discussions about two of these theoretical concepts: ‘best interests’ and ‘children’s views’. ‘Conceptualisations of domestic abuse’ are addressed in the third chapter of this thesis along with other literature about domestic abuse. The final part of this chapter reviews Scottish case law about each of the three concepts. It discusses how these are used and interpreted in courts.

The legal focus of this chapter is important given that the majority of families involved in the study had resorted to court to resolve contact. Furthermore, as Mnookin and Kornhauser’s (1979) landmark study of family law in the USA found, the ways in which the law is interpreted and applied in court influences how disputes may be resolved outwith of court. Mnookin and Kornhauser used the phrase ‘in the shadow of the law’ to refer to how the rules and decisions of courts have influence on the negotiations that take place amongst parents even if they do not step foot in court:

Divorcing parents do not bargain over the division of family wealth and custodial prerogatives in a vacuum: they bargain in the shadow of the law. Legal rules governing alimony, child support, marital property, and custody give each parent certain claims based on what each would get if the case went to trial. In other words, the outcome that the law will impose if no agreement is reached gives each parent certain bargaining chips – an endowment of sorts.

(Mnookin and Kornhauser, 1979: 968)

2 Review of Scottish legislation

This section reviews the legislative framework that exists in Scotland for private family actions that deal with disputed child contact. When making adoption and permanence orders, the family court may make orders for parental contact. The Children's Hearing System, which is the primary structure for dealing with child protection concerns, also considers and makes legal orders for child contact. When dealing with children who are in need of care and protection, the Children's Hearing System can make supervision requirements that regulate contact between child and parent. However as this study is concerned with children whose interaction with contact legislation was a result of parental disputes, the focus of this chapter is exclusively on private family actions. The section describes the standards set out by the United Nations Convention on the Rights of the Child, the Children (Scotland) Act 1995 and the European Convention on Human Rights to manage child contact arrangements following parental separation.¹ It describes the processes used by courts to make decisions about contact and the processes used to take children's views. It highlights how these concepts 'best interests', 'children's views and 'conceptualisations of domestic abuse' are key to this study.

2.1 United Nations Convention on the Rights of the Child (CRC)

Although the CRC is not enforceable by an individual child in the UK, it remains one of the most significant instruments for children's rights. The CRC's importance derives from its ratification by all but two countries (Archard, 2004: 58). This collective acceptance of rights for children has meant that the CRC has significant weight and influence over how society (including courts) considers children and the rights they have. Bainham (2003: 98) describes the CRC as being more than

¹ Whilst it should be noted that the great majority of contact arrangements are made outwith court proceedings, courts have a significant role where contact is problematic, for instance where there is a high degree of parental conflict or concerns about a child's well-being (HUNT, J. & RODGERS, B. 2004. Child contact with non-resident parents. *Family Policy Briefing*. Oxford.)

symbolic. Rather, it is an international standard against which domestic law is measured. The CRC establishes a range of duties and responsibilities for parents. Although it makes reference to parental rights in relation to rights that the state may accord them, the CRC itself does not ascribe rights to parents.

In its preamble, the CRC establishes the premise that a child's wellbeing is best served in a family environment. The importance of the family is developed further in several of the CRC's articles. Article 7(1) establishes the right of a child to form a relationship with both parents from birth. Article 18(1) continues the idea that it is a child's right to be cared for by both parents. The CRC requires countries to recognise that both parents have responsibilities for their child's upbringing. However, it also recognises that for many reasons (including parental separation) families are not always nuclear or intact. To deal with this, Article 9(3) establishes a child's right to a continuing relationship with a parents should they be separated from them. This right is not absolute: it exists when it is considered to be in the child's best interests.

These three articles establish the CRC's view that the family and relationships with parents have crucial roles in a child's life. The notion that children's rights and parental responsibilities are not unconditional, and should be viewed through the prism of child's 'best interests', is reinforced in Article 3(1). It requires that institutions (including the courts), regard the child's best interests as a primary consideration when making decisions concerning a child.

Article 12 makes additional requirements that should be observed when determining actions concerning children. It requires that states provide the child with opportunities to express views freely about matters that affect him or her, and that the child's views are given weight in accordance with his or her age and maturity. The CRC stresses that the opportunity to express views is particularly important during court proceedings.

2.1.1 Implications of the CRC on child contact

The CRC regards the child's upbringing as a responsibility that is ideally shared by parents. However the right to establish and continue a relationship resides with the child, not the parent. It is less clear what constitutes a child's best interests and the role that children should have in contact decisions. These ambiguities have given rise to much debate, and are issues that are explored later in the chapter during the review of case law and in the later findings chapters

2.2 European Convention on Human Rights (ECHR) and Human Rights Act 1998

The prominence given to a child's welfare when making decisions is not consistent across all legislation. Whilst the CRC defines them as 'a primary consideration' (Article 3), the priority given to children's welfare is less in the ECHR that was incorporated into domestic legislation by the Human Rights Act 1998 and Scotland Act 1998.

2.2.1 ECHR and the child's relationship with their parents

Article 8 of the ECHR defines the right to respect for private and family life. Interference by the state in family life must be lawful, 'necessary and proportionate' (Bainham, 2005: 65). This suggests that contact between a non-resident parent and child should be respected by courts. The ECHR applies to all members of a family equally. Both parents and children therefore have a right to contact. This egalitarian approach to parents and children's rights appears incompatible with the Children (Scotland) Act 1995 where the child's interests are viewed as paramount in disputed cases.

It is worth noting that that the ECHR was not written with children in mind (Grant and Sutherland, 2001: 36-7) and when considering matters affecting children the CRC can be considered alongside the ECHR (Kilkelly, 1999, Kilkelly, 2001, Woolf, 2003). Whilst this may not provide a child's interests the same level of protection that the Children (Scotland) Act 1995 does, it ensures that the child's welfare is

given particular consideration. The European Court does not tolerate decisions that remove or restrict parental responsibilities and rights that are based on discrimination. It has accepted decisions that are based on the child's welfare provided they are lawful, necessary and proportionate (Herring, 2007: 403).

Attempts have been made to address the dilemma of competing parents and children's rights to contact by theorising models of best interests. Examples of these include Choudhry and Fenwick's (2005) parallel analysis, Bainham's (1998) primary and secondary interest model, Herring's (1999) relationship based welfare model and Eekelaar's (2002) least detrimental model.

Article 6(1) of the ECHR states that *'In the determination of his civil rights and obligations or of any charge against him, everyone is entitled to a fair and public hearing.'* This has implications for how the views of children are treated during contact disputes. As discussed earlier the CRC provides children with the right to *'freely'* express views about matters that affect their lives. Some children may feel unable to express a view about contact if their views are not treated in confidence. They may be reluctant to express views if they will be shared with parents. Not disclosing a child's views to a party in a contact dispute may conflict with ECHR Article 6(1) entitlement to a fair trial. Namely, the party is not aware of all the evidence that the court considers. This is examined later in this chapter's review of case law.

2.2.2 Implications of the ECHR for child contact

The ECHR provides a set of rights that are as applicable to children as to adults. As it is not child-specific, the ECHR has been used in conjunction with the CRC when dealing with matters that affect children. At first inspection Article 8(2) of the ECHR casts doubt over elevating a child's interests over a parent's when considering contact. However, if the CRC is used in conjunction with the ECHR, a child's interests can still be given special consideration when making decisions. Article 8(2) of the CRC has the potential to clash with Article 6(1) of the ECHR.

2.3 Children (Scotland) Act 1995

One aim of this legislation was to incorporate the standards set out in the CRC into domestic legislation. There are three key overarching principles of the Act that inform all its provisions (Sutherland, 2008: 31)

- the welfare of the child is the paramount consideration;
- the court must give the child the opportunity to express views and in light of the child's age and maturity, takes these views into account; and,
- no order will be made unless the court considers that it would be better for the child that an order be made than none made at all (the no-order principle).

2.3.1 Parental responsibilities and rights

The Children (Scotland) Act 1995 changed how courts interpret the relationship between parents and children, as it focuses on 'parental responsibilities and rights' rather than 'parental rights'. This represents a substantial shift in how courts view the relationship between the child and parents (Sutherland, 2008: 357-8), (Marshall, 2001: 23). Acting on the recommendations made in the Scottish Law Commission's *Report on Family Law* (1992) the focus on parental responsibilities reframed the relationship, as Tisdall comments it establishes '*children as individuals, whose rights must be considered in parental decisions*' (1996: 29). The role of children's rights in defining the child's legal relationship with the parent can be observed in other aspects of the Children (Scotland) Act 1995. Instead of discussing 'custody' and 'access', the Act refers to the more neutral 'contact' and 'residence', confirming that children are not the property of their parents, and underlining that parental responsibilities and rights continue even if a child and parent live apart.

The prominence placed on parental responsibilities rather than rights are demonstrated in the ordering of the Act. Section 1 of the Act establishes the four parental responsibilities accorded to parents:

- (a) to safeguard and promote the child's health, development and welfare;
- (b) to provide, in a manner appropriate to the stage of development of the child—

- (i) direction;
 - (ii) guidance,
- to the child;
- (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
 - (d) to act as the child's legal representative.

These responsibilities exist 'as far as they are practicable and that they are in the child's interests'. Although circumstances surrounding parental separation may make it impractical for a non-resident parent to fulfil all responsibilities, separation creates an obligation for a non-resident parent to maintain a relationship with their child. Section 1(c) states clearly that it is a non-resident parent's responsibility to maintain regular and direct contact with a child. That these responsibilities exist as far as they are in the child's interests is consistent with the CRC and sets the tone for the rest of the legislation. It suggests that the child's interests should be central to parental actions. As these parental responsibilities exist *only* if they are in a child's interests, contact is associated with the interests of the child rather than those of the parent.

Parental rights that correspond with parental responsibilities are established in s.2 (1) of the Act:

2(1) Subject to [Section 3(1)(b), and (d) and (3)] 1 of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—

- (a) to have the child living with him or otherwise to regulate the child's residence;
- (b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
- (c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and
- (d) to act as the child's legal representative.

The legislation unambiguously states that parents *only* have rights so that they can fulfil their responsibilities. As with parental responsibilities, rights are exercised according to the child's interests and as far as practicable. Edwards and Griffiths (Edwards and Griffiths, 2006: 117) comment that parental rights are not absolute and are not able to be claimed in the way other rights are. Drawing on the House of Lords decision in Gillick², they suggest that parental rights are 'more akin to privileges or claims that are derived from parental duty and exist(ing) only for the protection of the child'. Norrie (1998: 11) offers similar criticisms about the language of 'parental rights'. He comments that, as these rights are more like capabilities or powers and that it would be more accurate to refer to them as 'parental powers'.

As parental rights exist only to enable parents to fulfil a responsibility, then Section 2 (1)(c) of the Act only establishes a parental right to contact to empower a non-resident parent to fulfil their obligation to maintain a relationship and direct contact with a child. This responsibility and corresponding right only exists when it is in the child's interests and is practicable.

2.3.2 Contact orders and the welfare principle

Section 11 of the Children (Scotland) Act 1995 provides individuals with opportunities to seek parental responsibilities and rights and to regulate the responsibilities and rights of others. Orders that can be made include: the removal or imposition of parental responsibilities or rights; residence and contact orders; specific issue orders; interdicts; orders to manage a child's property; and orders to appoint or remove a person as a child's guardian. Section 11 (2)(d) of the Act enables the court to make an order to regulate the maintenance of relations and direct contact between a child and non-resident parents:

11 (2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—

² Gillick v Norfolk and Wisbech AHA [1986] AC 112, p184 as per Lord Scarman

(d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a “contact order”);

In most cases, court-ordered contact is not necessary. However orders can be useful in situations where there is a dispute over if and how contact should be organised (Sutherland, 2008: 427). In making decisions about contact, the court refers to the Act’s overarching principles (as detailed in s.11 (7)). These relate to the paramouncy of the child’s welfare, the views of the child and the no-order principles as described earlier:

11 (7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and

(b) taking account of the child's age and maturity, shall so far as practicable—

(i) give him an opportunity to indicate whether he wishes to express his views;

(ii) if he does so wish, give him an opportunity to express them; and

(iii) have regard to such views as he may express.

Section 24 of the Family Law (Scotland) Act 2006 attempted to clarify how courts consider a child’s best interests when making contact decisions. It amended section 11 of the Children (Scotland) Act 1995 so that courts are now required in law to have ‘particular regard’ to how abuse affects a child’s welfare. Courts now have to consider the need to protect the child from abuse or the risk of such abuse, the effects that such abuse have on the child, and the effects that such abuse may have on a parent’s capacity to fulfil parental responsibilities and rights:

11 (7A) In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

(a) the need to protect the child from—

(i) any abuse; or

(ii) the risk of any abuse,

which affects, or might affect, the child;

(b) the effect such abuse, or the risk of such abuse, might have on the child;

(c) the ability of a person—

(i) who has carried out abuse which affects or might affect the child;

or

(ii) who might carry out such abuse,

to care for, or otherwise meet the needs of, the child; and

(d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

The provisions made under section 11(7B)(d) are particularly relevant in the context of domestic abuse. These require the court to consider the effects of abuse or the risk abuse might have on fulfilling parental responsibilities. This suggests that the court has to not only consider the interests of the child, but also consider whether the effects of abuse or risk of abuse affects a person's ability to carry out other parental responsibilities. This provision does not discriminate between the resident or non-resident parent, so has the potential to question both the non-abusing parent's and abusing parent's abilities to fulfill their parental responsibilities in light of domestic abuse (Sutherland, 2008).

The legislation provides a definition of the 'abuse' that courts should consider when weighing a child's best interests. Section 11 7 (C) states that:

(7C) In subsection (7B) above—

“abuse” includes—

- (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
- (b) abuse of a person other than the child; and
- (c) domestic abuse;

“conduct” includes—

- (a) speech; and
- (b) presence in a specified place or area.

While ‘domestic abuse’ is not defined in the legislation, the description of abuse through sections (7C)(a-b) appears to encompass domestic abuse. They focus on the types of behaviour that can form a pattern of domestic abuse. They include the physical and mental effects that domestic abuse can have, as well as the fear and distress it can create. They also refer to the abuse of a person other than the child. Thus the court is able to consider the abuse that the non-abusing parent has been subjected to. However, as noted earlier, this does not necessarily mean that the court will make an order in favour of the non-abusing parent. The legislation has the potential for orders to be made against the non-abusing parent because of the impact that abuse has had on their ability to fulfil their parental responsibilities or rights.

A further amendment made to Section 11 Children (Scotland) Act 1995 by the Family Law (Scotland) Act 2006 requires that when making court orders like contact orders, courts must consider the issue of parental co-operation when weighing a child’s best interests:

(7D) Where—

- (a) the court is considering making an order under subsection (1) above; and
 - (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child,
- the court shall consider whether it would be appropriate to make the order.

These provisions establish that for contact to be in a child’s best interests, the court must consider that making an order requires parents to co-operate with one another.

A history of domestic abuse can have serious implications for these provisions. Contact in these circumstances requires a victim of abuse and perpetrator of abuse to co-operate and work together. Contact requires them to communicate with one another and reach agreements on matters that affect their child.

2.3.3 Children's views

The importance placed on providing opportunity for the child to express a view and for these to be considered is observed throughout the Children (Scotland) Act 1995. Section 6 places a duty on parents to consider the views of the child when making a 'major decision' that impacts the child:

- (1) A person shall, in reaching any major decision which involves—
 - (a) his fulfilling a parental responsibility or the responsibility mentioned in Section 5(1) of this Act; or
 - (b) his exercising a parental right or giving consent by virtue of that Section, have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this Subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

This establishes that where contact is being arranged outwith courts, parents are required to give consideration to the child's views. There is no published information on how parents give effect to this requirement.

The necessity of considering a child's view is reiterated in s.11 (7)(b) in reference to court orders that relate to parental responsibilities and rights (including contact orders):

- (b) taking account of the child's age and maturity, shall so far as practicable—
 - (i) give him an opportunity to indicate whether he wishes to express his views;

- (ii) if he does so wish, give him an opportunity to express them; and
- (iii) have regard to such views as he may express.

As with Article 12 of the CRC, the weight given to a child's view is dependant on age and maturity. Tisdall (1996: 88-90) comments that the Act's qualification has the potential to dilute the impact of the views of a younger child. This is reinforced by the legislation's presumption in Section 11 (10) that a child over twelve should be considered sufficiently old and mature to give a view. It is important to note that the child's views are subordinate to the welfare principle. A court's final decision is therefore based on what the court considers to be in the child's best interests rather than on the child's views.

There are a number of mechanisms established for children to give their views in disputes about contact. These are detailed in the Sheriff Court Ordinary Cause Rules (OCR). The mechanisms are summarised below:

In writing – F9 form

Children's written views can be sought via the 'F9 form'. This form is sent directly to children by the court. If children wish, they can express their views in writing on the form and return it directly by post to the Sheriff.

The child speaking directly with the Sheriff

A child can meet and convey their views directly to the Sheriff. The Sheriff normally instigates this method, rather than the child.

Through a court reporter or curator ad litem

A court reporter or curator ad litem can be appointed by the court to investigate the circumstances of the child. As part of this, the court reporter or curator may seek children's views and report these to the court.

The child being independently legally represented

A child with legal capacity can sue or defend any civil proceedings. The child can raise proceedings or apply to become party to proceedings. A child can also instruct a solicitor to write to the court and express the views of the child.

2.3.4 Implications of the Children (Scotland) Act 1995 on child contact

The Children (Scotland) Act 1995, like the CRC, starts from the perspective that the family is the favoured place for a child. It also establishes that parental separation should not prevent a child from having a relationship with a non-resident parent. To facilitate this relationship, the Act provides non-resident parents with a responsibility and reciprocal right to contact with their child. However this should only be fulfilled when it is in the interests of the child. The amendments made by the Family Law (Scotland) Act 2006 have required courts to consider domestic abuse as a determinant of a child's welfare, including how domestic abuse affects the capacity of an adult to be a parent. This makes it explicit that domestic abuse may be contrary to a child's best interests. However, it is not clear under what circumstances contact would be contrary to a child's interests, neither is it clear what weight should be given to the child's views in making decisions. When making orders, courts have to also consider an order will require parents to co-operate with one another. This is especially relevant when there is entrenched conflict or a history of domestic abuse.

3 Emerging theoretical concepts

The review of the CRC, the ECHR and Children (Scotland) Act 1995 identified three concepts as critical to the examination of contact and domestic abuse. These are:

'best interests', *'children's views'* and the *'conceptualisations of domestic abuse'*. This section now discusses the key literature and debates on 'best interests' and 'children's views'. As stated earlier, 'conceptualisations of domestic abuse' are addressed in the subsequent chapter in its review of literature on contact, children and domestic abuse.

3.1 Best interests

The ‘best interests’ principle is a concept that has been subject to criticism. Much of this has related to the absence of consensus on what constitutes a child’s best interests. An early critic, Mnookin (1975), argues that the concept is ambiguous and indeterminate. This means that any decision about a child’s ‘best interests’ is open to bias. Decisions may be based on the personal values or indeed prejudices of adults (Woodhouse, 1999; Mnookin, 1975). Eekelaar (2002) argues that the lack of transparency surrounding best interests means that there may be insufficient protection of children’s interests. Two key issues emerge from these arguments. First whether there is an absolute definition of children’s best interests. Second whether adults are subjective in their assessment of children’s best interests. Eekelaar (2002) argues that decisions may be based on adults’ assumptions of a child’s best interests rather than on a rigorous and objective assessment of a child’s interests. This raises questions about who should decide a child’s best interests. What should their expertise be? How should they make such an assessment? The scope for these criticisms is perhaps even greater in Scots law because of its rejection of a welfare checklist. Sutherland (2008: 453-488) points to key factors that case law directs Sheriffs to consider when weighing a child’s best interests. These include: the child’s physical and emotional welfare, the status quo (as part of the child’s emotional welfare), the child’s tender years doctrine or maternal preference, cultural and racial identity, religion, applicant’s general conduct, lifestyle (for example substance misuse) and domestic abuse and its impact on children.

There is of course a range of other competing theories on children’s needs. For instance Maslow’s (1973) hierarchy of needs, or psychological perspectives on attachment theory (Bowlby, 1969) and children’s psychological needs (Pringle, (1980). As Clive (1997) comments, ‘the welfare of a child is not a legal technical concept’. However these other paradigms are rarely squarely addressed in case law. While the Sheriff is the final arbiter of a child’s best interests, expert witnesses may be called by one of the parties in a dispute about contact to support and advance their position. Case law shows that these often rely heavily on psychological perspectives of child development. Courts do subject the methodology and findings of expert

witnesses to some scrutiny. In *J v J*³, the Sheriff attached little weight to evidence of the expert witness as he had interviewed the children, the mother but not the father as part of his investigation. The Sheriff made comment that the expert witness did not have sufficient knowledge on which to base his conclusions.

Douglas (2005: 173) is more tempered than others in her criticisms of ‘best interests’, she comments that ‘the uncertainty and inconsistency may be both the greatest strength and greatest weakness of the welfare principle’ alluding to the ability of the concept to accommodate a child’s unique set of circumstances. Parker (1994) develops these ideas; he cautions against assumptions that there is only one standard against which children’s best interests can be measured. Rather Parker argues that the interpretation of a child’s welfare will depend upon cultural views about children and their upbringing. He also comments that the answer to what are a child’s best interests cannot be answered in the ‘abstract’. Reference must be made to the particular circumstances of the child and the values of society. The importance placed on the particular circumstances of the child is borne out in the subsequent review of case law.

A further complication for the best interests principle relates to the time frame in which a child’s best interests are considered (e.g. Eekelaar, 1994; Mnookin, 1975). What distinction should be made between the child’s current and future interests?

3.1.1 Best interests and the scope for a ‘pro-contact’ bias

The extent to which courts base a decision solely on the individual merits of the case when weighing of a child’s best interests is debated in the literature. Emery (2007) describes the concept as a ‘pejorative test’. The lack of any empirical grounding or clear definition of best interests is seen to permit bias in expert opinion and judicial discretion (Emery et al., 2005; Herring, 2005). Piper (2000) further argues that there are in fact generalisations made by those working in family law about what is best for children. She argues that these centre on the idea that more than anything:

³ 2004 Fam LR 84

‘children need two parents who cooperate with each other and who both keep in contact with their children’ and ‘concerns [about] the vulnerability of children in the context of decision-making’. We return to the concern about children’s vulnerability in the later discussion on children’s participation in contact disputes.

For now, we focus on Piper’s claim that parental co-operation and contact taking place is viewed as best for children. Piper supports her claim with findings from a review of English research carried out in the mid-nineties on family law. She posits that solicitors see their key aim as getting parents to co-operate and for contact to take place (e.g. Bailey Harris et al, 1998; Cantwell et al., 1999; King, 1999), thus contributing to an assumption that contact is always beneficial for children and, that any opposition to this is unreasonable. Furthermore, solicitors discourage parents to oppose contact (e.g. Hester et al., 1997; Radford et al., 1997). Piper (2000) argues that pressures for parents to cooperate and for contact to take place may contribute to domestic abuse being ‘hidden’ in family actions. Questions are not asked about domestic abuse and if it is revealed women may be encouraged to ‘let sleeping dogs lie’ (Hester et al, 1997) in order to reduce conflict and instead promote co-operation and contact.

Hester (2011) develops these ideas with her ‘three planets’ model to illuminate how the different cultures of child protection, domestic violence and family law ‘planets’ mean that domestic abuse and the risks it presents are addressed differently. She argues that the family law planet’s focus on co-operation and the future means that domestic abuse is often overlooked in family law and dangerous contact arrangements are made.

Arguments that any consideration of children’s best interests might be dominated by ideas of parental co-operation and contact as the best option are given further weight when we consider more recent research. Hunt and McLeod’s (2008) analysis of applications for contact orders in English courts found that while there is no statutory presumption of contact, *‘it was absolutely clear from the study that the courts start from the principle that unless there are very good reasons to the contrary there*

should be contact' (p251). Their analysis revealed that around one fifth (61 of 308) of non-resident parents seeking contact were not awarded direct contact. However of these, there were only 7 cases where the lack of direct contact had resulted from the courts' adjudication. In the remaining 54 cases the absence of direct contact was because the non-resident parent had stopped pursuing contact. Of particular interest to this study, are the study's findings about how welfare issues affected contact outcomes. Hunt and McLeod reported that in half of the cases (154 of 308), resident parents made allegations of domestic violence against the non-resident parent. They found an association between welfare issues and whether direct contact was ordered. In eighty-four percent of cases that ended in indirect or no contact there were welfare issues including 'domestic violence.' However the raising of welfare issues did not necessarily determine contact outcomes. Of the cases where at least one serious welfare concern was raised, sixty per cent ended with in unsupervised or residential contact.

Trinder et al's (2010a) study adds to the literature on how welfare concerns are addressed in English courts. Using conversational analysis of fifteen English court conciliation or court based dispute resolution sessions, they examined how disputes are resolved. All of the cases they examined involved allegations of abuse. Trinder et al found that conciliators marginalised allegations of abuse during sessions. They reported that conciliators 'routinely ignore, reframe and reject allegations' unless claims were supported by external evidence. They found that the way in which allegations were presented influenced how conciliators respond to them. Allegations that were made weakly or tentatively were discounted and not tested; where concerns continued to be pressed by a parent, the parent making allegations was treated punitively. Trinder et al concluded that the way the conciliators deal with allegations of abuse uncovers what conciliators see to be their role: to promote and restore contact. This overriding focus may very well be at the expense of assessing or managing risk in contact.

A recent Scottish study (MacKay, 2012) on contact applications revealed similarities in the type of cases that resort to court to resolve disputed contact to those identified

by Hunt and McLeod (2008). MacKay found that in almost half of the cases she analysed (148 of 299) had allegations of domestic abuse. This is a greater proportion than an earlier Scottish study by McGuckin and McGuckin (2004) involving a smaller sample of contact applications. They had reported that 36% of the 90 cases analysed involved allegations of domestic abuse. Like Hunt and McLeod (2008), McKay (2012) found that where there were no orders for contact made this was rarely because the court has not ordered contact. Rather it was more common for this to be because the non-resident parent or the case had abandoned or because the case was dismissed. These findings challenge the idea that non-resident parents are treated unfavourably by courts and highlight that courts may be influenced by a pro-contact stance.

3.1.2 Children's interests above those of parents

Another criticism of the welfare principle is the priority it gives to the interests of children seemingly at the expense of the interests and rights of other members of the families. Herring (2005) comments that the best interests principle 'generates an image of each individual family member with their own rights and interests which need to be weighed up, although in fact only the child's interests are to count'. Freeman (2007) comments that there are good reasons why children's interests should be prioritised: children are especially vulnerable, have fewer resources, are usually blameless and for too long have been treated as objects of concern (p95). However, Woodhouse (1993) argues that emphasising the interests of children does not necessarily mean that the interests of adults are neglected. She comments that: 'A truly child-centred perspective would . . . expose the fallacy that children can thrive while their care-givers struggle, or that the care-givers' needs can be severed from the child's, which can lead to the attitude that violence, hostility, and neglect toward the care giver are somehow irrelevant in the best interests calculus.' (p1825). This idea is particularly relevant when we consider domestic abuse, the potential overlap between the interests of children and the non-abusing resident parent, and the provisions of the Children (Scotland) Act 1995 to consider the effects of abuse on the non-abusing parent. As Freeman (2006) concedes, these are easier concepts and dilemmas to articulate than they are to resolve in practice and there is a danger that

the interests of adults may overshadow those of children. Eekelaar (2002) also raises essential questions on the balancing exercise between competing interests: how is this to be carried out, by whom, and how much weight is to be given to children's interests? These questions show that the balancing of best interests is by no means a simple or straight forward task.

3.1.3 Reconciling children's interests with their views

A classic child's rights debate about the best interest principle relates to how best interests can be reconciled with a child's rights to express a view. This is often referred to as the 'protection – participation debate' (see Marshall, 1997 for a fuller discussion). The CRC and Children (Scotland) Act 1995 assert that the child's best interests are the primary and paramount consideration in matters affecting a child's life, and that the child's views must be part of the weighing of a child's interests. Freeman (2007) comments that attempts to reconcile this conflict mainly involve attempting to balance children's autonomy and their best interests. Eekelaar (1994) addresses this seeming conflict by proposing that children's rights should be situated within a dynamic of self-determinism. This aims to provide children with the maximum opportunity to make choices that are as near as possible to autonomous choices. Fortin (2004) further comments that cogent arguments can be made about not intervening in children making short-term dangerous decisions so as to protect their long-term autonomy. This complements Freeman's (1983) argument that fundamental to rights is the belief that there is also a right to make mistakes. However as Morrow (1999) comments, children's autonomy and decision-making is in a context that is controlled and intends to 'enhance their capacities for mature and well informed choices'. This shows that it may not always be possible to reconcile children's views with their interests. The arguments highlighted here represent affording children varying degrees of autonomy. However, the law states that adults ultimately retain responsibility for making decisions about children. So adults may determine that the views articulated by the child are contrary to the child's interests. Adults are free to then go on and make a decision that is contrary to the views of the child.

3.2 Children's views

The role that children should have in disputes about contact is contested. The claims for and against children's participation are often couched in different constructions of children and childhood. These relate to debates about children's vulnerability, their competence and ideas about children's autonomy and self-determination. This section discusses some of the key literature on children's participation in family law. It highlights the ways in which children's participation is contested and discusses existing research on children's participation in disputes.

Traditionally, there has been an assumption that children's vulnerability means that they may be harmed if their views are sought, particularly during court proceedings (Fortin, 2009; Smart, 2003 and Birnbaum, 2009). However, the CRC has been pivotal in raising the profile of children's participation rights, and as we saw in the review of legislation, provisions have been made in domestic legislation that support children's participation in disputed contact.

Moral and rights based arguments are used to argue for children's participation in family law disputes. Freeman (2006) sets out key arguments as to why children's rights are important. Selected highlights include: rights confer respect and dignity on children; rights give children status and mean they cannot be overlooked by those more powerful (adults); rights allow children to exercise agency and are an important tool for advocacy. He further comments that rights are interdependent. Therefore, children's protection rights are undermined if their participation rights are denied. Adding to these broad ideas are specific arguments for children's participation. These centre around ideas of 'enlightenment' and 'empowerment' (Warshak, 2003, Cashmore, 2011). The 'enlightenment' argument asserts that listening to children's views and experiences contributes to better decisions that are grounded in children's lives and not on the 'untested assumptions of adults' (Smart and Neale, 2000; Warshak, 2003; Parkes, 2009). The 'empowerment' argument asserts that children benefit through participation, through an increased sense of control and recognition

that they have perspectives that are important to the decision (Smart and Neale, 2000; Warshak, 2003; Cashmore 2011).

May and Smart (2004) highlight the tensions between recognising children's rights, children's welfare and parents' rights. They argue that adults (parents and professionals) often find themselves struggling between desires to protect 'vulnerable' children from the burden of decision-making and supporting children's participation rights. Tisdall and Morrison (2012: 157) further underline the reasons why children's participation in family law is particularly challenging: 'courts are involving them [children] in the private lives of families; parents have traditionally been seen as the parties involved, and not children; including children means involving them in adult disputes; and children are frequently young.' They conclude that children's participation in disputed contact is 'thus testing traditional attitudes towards childhood, children and family law'. Furthermore we cannot ignore Raitt's (2007) comments that the legislative framework establishes that decisions about children must be made in the 'best interests' of the child. This dilutes the influence of children's views and the scope for children to exercise agency. She comments that: 'There are concerns that whatever a child may claim as their wish, can be subordinated to other considerations based upon widely held assumptions about what is 'genuinely' in a child's best interests' (add page no).

3.2.1 The vulnerable child

The view that involving children in disputes gives them 'too much' responsibility is well documented. This construction of children sees them as vulnerable and in need of protection. This is evident in Warshak's (2003) argument that children's direct involvement in disputes risks their emotional wellbeing. Emery (2003) adds to this with his claims that children's participation can overburden them and burdens them with adult responsibilities that they are not equipped for.

Research with children about their participation in family law adds subtlety to these ideas. For instance, Neale and Smart (1998) found that while children wanted a say about with whom they lived, they did not want to be responsible for the entire

decision. Cashmore and Parkinson's (2008) study adds to this finding. The study of ninety parents and forty-seven children sought views and experiences about children's participation in family law disputes. Ninety-one per cent of children reported that they wanted to be involved in decision-making but not necessarily *make* the decision about post-separation arrangements, thus mirroring current Scots law. Cashmore and Parkinson also found that children who were involved in contested matters (including abuse and violence) expressed a stronger desire to influence the decision of family law disputes than others. This coincides with findings from other studies (e.g. Smart et al., 2001, Gollop et al., 2000). The reasons the children gave as to why their involvement in disputes matter, echoes some of arguments given for children's rights (e.g. Cashmore and Parkinson, 2008). Namely participation acknowledges that decisions are about children's lives and that listening to children's views will lead to better decisions. This supports Eekelaar's (1994) view that key to acting in children's best interests is listening to them and working out what is important 'to' them.

3.2.2 The manipulated child

Ideas about children's susceptibility to parental influence or manipulation are repeated in criticisms about children's participation and in research. Warsark (2003) argues that children may not know what is best for them and that they are susceptible to pressure and manipulation by parents. His critique highlights ideas about children's supposed vulnerability and (in)competence. These ideas are replicated in Sawyer's (2000) research which reported that child welfare officers considered children's opposition to contact to be a result of pressure from resident parents. Other research has revealed similar findings (e.g. Neale, 2002 and Piper, 1997). Ideas about children's views being open to manipulation were reinvigorated by Weir (2011). He argues that children's views in high conflict contact disputes are extremely unreliable. He bases this on a retrospective review of his clinical work as an expert witness within family courts in England and Wales. In reviewing fifty-eight cases where children had expressed views against contact, Weir claims that in two thirds of the forty cases where contact was directed to take place (contrary to children's views), children enjoyed the contact. He asserts that this contact was

‘positive’. Weir posits that children’s initial views against contact are a product of resident parental influence and that the current weight given to listening to children in court disputes may encourage parental manipulation. There are several methodological weaknesses in Weir’s study. The most substantial is quality of the evidence that he claims supports his conclusion that children’s views are questionable. Weir only observed one contact session between a child and non-resident parent. He claims that informal feedback from lawyers, guardians and reporters about subsequent contact that took place found that contact was positive. He did not speak directly to the children nor to the resident or non-resident parents once contact had been initiated. The evidence that Weir uses to argue children’s views about contact had changed and their views are therefore unreliable did not enquire or take account of what children’s ‘new’ views were.

Another issue connected to manipulation is the way in which adult gatekeepers use and ‘allow’ certain children’s views into family law disputes. Tisdall and Morrison (2012) comment that since children’s views have been incorporated under a rights approach, there are some views that are more readily accepted than others. They argue that the system values and privileges ‘autonomous, rational and articulate individuals’. Children who do not meet these criteria risk their views being dismissed and regarded as ‘influenced’ or emotional. Trinder et al’s (2010b) analysis of English ‘in court conciliation meetings’ or court-based dispute resolution sessions examines how the needs and wishes of children feature in the decision making processes. They report that while children’s needs and wishes were influential; this was because they were used as a strategic and powerful resource to argue for a particular outcome instead of using children’s needs and wishes as the starting point for decisions. They also found that children’s needs and wishes are often based on adult representations of these. Conciliators did not meet with children and therefore relied on parents’ ideas about children’s needs and wishes. Trinder et al conclude that the influence children have in family court dispute resolution is subject to the agendas of adults and adult representations of what children’s needs and wishes are. This raises interesting questions about the method by which children

participate. How should their views be collected? Who should present these to the court? And what interpretation will they be subject to?

Cashmore and Parkinson's (2008) study provides insight on the specific issue of children's participation in family law and parental manipulation. They found that parents were more concerned about the potential of children's participation to make them vulnerable to parental manipulation than children were. In the study half of the ninety parents reported being concerned that children were possible 'victims of manipulation'. However children in the study were more concerned by issues of loyalty, fairness and any risk of jeopardising their relationship with parents. This finding suggests that, in family law disputes, children consider the interests of others when forming their views. This provides a different perspective to ideas of manipulation.

Tisdall and Morrison (2012) problematise ideas about the manipulated child. They question a paradigm of children's participation that focuses exclusively on children as social actors and their agency. They argue that whilst a powerful tool, it does not accommodate ideas of identity or subjectivity. Drawing on the work of Mantle et al (2006), Tisdall and Morrison (2012) suggest 'that no one is truly an 'autonomous agent' and all views are contingent, interpreted, and contextually dependent'. These ideas are given further weight by Hunter's (2007) arguments, that 'the quest for access to children's true or authentic' wishes is misplaced'. Tisdall and Morrison argue for a more expansive understanding of how children's views may be influenced by the people close to them and the context they live in.

3.2.3 The efficacy of the methods designed to take children's views

How best to facilitate children's participation is an issue that continues to be debated. Key mechanisms that are examined in the literature are: the child being legally represented in proceedings; expert reporting of children's views; or the child meeting directly with a judge or sheriff (Parkes, 2009). Currently, judicial interviews with children are receiving increased interest across jurisdictions (Birnbaum and Saini, 2012). Raitt (2007) argues that in speaking directly to children, Scottish judges are in

a position to significantly improve and enhance children's *experience* of participation. However, she acknowledges that there may be barriers to this (e.g. judges' skills in talking to children) but that these are not new issues nor are they insurmountable. Parkinson et al's (2007) Australian study suggests an appetite amongst children to meet with judges in family law disputes. They reported that children who had been subject to contested proceedings were much more likely to want to speak directly to a judge than other children even though this group of children had been interviewed by an independent expert and had a child representative. It seemed that children wanted to ensure that their views were heard directly by the person making the decision.

Scottish studies show that very few children are legally represented in proceedings (Tisdall, 2002; McGuckin and McGuckin, 2002). The most common way for children's views to be taken into account in a Scottish dispute is if a court reporter is appointed to investigate the circumstances of the child (McKay, 2012). Court reporters tend to be solicitors. Findings from both Dick (2008) and Morrison et al (2013) raise questions about whether court reporters are equipped to elicit or represent children's views. Dick (2008: 229) comments that:

‘There are no special qualifications required for solicitors who carry out these reports ... Many are exemplary in their impartial and helpful focus and in making sensible and practical suggestions which form the basis for workable plans. However, the lack of understanding of child development and family dynamics can result in an adult view rather than a child-centred one.’

Morrison et al (2012) further report that court reporters receive no specialist mandatory training in eliciting or representing children's views, children's rights or on domestic abuse which may be a barrier to children's participation in legal processes.

A further barrier identified by Tisdall et al (2002) relates to the information made available to children about the ways in which they can participate.. Subsequently, children's participation is often reliant on the initiative of their parents. Morrison et al (2013) highlight particular criticisms of current Scottish methods for children's

participation in family law disputes. They question the suitability of methods for younger children (particularly the F9 form); how and when decisions are made about whether children should be legally represented; and the absence of information provided by the court to the child about the progress or outcome of the case. Morrison et al (2013) also raise the thorny issue of whether children's views should be treated as confidential or shared with their parents through the court process which we will return to in the review of case law.

This section has highlighted some critiques about the concept of children's best interests and of children's views. It has shown that the lack of rigid definition about best interests means that it can accommodate the unique circumstances of children's lives. It allows for flexibility. However the lack of consensus or empirical basis for best interests means that it is a concept that is vulnerable to bias and individual prejudice about what is good for children. The research evidence drawn from English, and to a lesser extent, Scottish research alludes to an assumption that contact should take place. Ideas about the importance of parental co-operation being in children's best interests may mean that welfare concerns are overlooked or marginalized. Issues about the priority placed on children's interests over those of other members of their family were raised. It may be possible to accommodate parental interests when weighing those of children but there is a danger that children's interests become overlooked in practice. The discussion also highlighted a tension between children best interests and their participation rights.

Arguments for children's participation were found to rest on moral and rights arguments. Adding to these are ideas that involving children can lead to 'enlightenment' and 'empowerment'. That is decisions are more informed and children feel valued. Ideas about children's vulnerability, competence and autonomy and self-determination also influence how children's participation is framed and understood. The construction of children as vulnerable or manipulated can serve to exclude children from family law disputes, as can the methods that are established to support children's participation.

4 Review of Scottish case law

This section reports on a review of case law about disputed contact. It is important to recognise that case law provides only a partial insight into how legislation operates. Case law does not reveal children's or parents' experiences or perspectives of the legislation. Nonetheless, case law provides an important contribution to this thesis.

The review builds on earlier reviews about case law that were carried out in these areas by Marshall et al (2002), Tisdall and Morrison (2012) and Morrison et al (2013). This review seeks to add to these, particularly in its close examination of how domestic abuse is treated in contact disputes. The review of case law focuses on the theoretical concepts of 'best interests', 'children's views' and 'conceptualisations of domestic abuse'.

4.1 Best interests

Although predating the Children (Scotland) Act 1995, *Porchetta v Porchetta*⁴ has significant influence on how child contact is conceptualised, specifically whose interests contact is meant to serve and whether there is a legal presumption for contact. In this case the father sought 'access' to his 18-month-old son following his wife raising an action of divorce. In his application, the father's stated reasons for access were because he was the child's father. Lord Dunpack rejected this application and any legal presumption in favour of contact between a child and non-resident parent. He stated that:

'A father does not have an absolute right to access to his child. He is only entitled to access if the court is satisfied that that is in the best interests of the child.'

This underlines that contact exists to serve the interests of the child and not to fulfil a parental right. The idea that children's interests are the focus of decisions is repeated

⁴ 1986 S.L.T. 105

in a recent case, *S v S*.⁵ Although this case was about relocation and not directly about disputed child contact, the Inner House found that ‘the child’s interests was the sole criterion for the decision.’ Therefore, this highlights that children’s not parents’ interests are paramount when courts make orders.

The case of *Sanderson v McManus*⁶, also found that there is no legal presumption of contact. Lord Hope comments that while the relationships between child and non-resident parent can ‘never be dismissed as irrelevant’, the importance attached to it ‘must vary according to circumstances’. He goes on to say that decisions must not be based on any presumption but on an evaluation of the evidence. Lord Hope states that:

‘It may normally be assumed that the child will benefit from continued contact with the natural parent. But there may be cases where it is plain on the evidence that it has nothing to offer at all. There may be other cases where the evidence will show that continued contact is likely to be harmful. Whatever the view, which is taken on this matter in the light of the evidence, the child’s welfare is paramount. The decision of the court will depend on its analysis of all the factors, which bear on the question what is in the best interests of the child.’

These comments highlight that while there may not be a legal presumption for contact, there is an assumption that in most cases a child will benefit from continued contact with a non-resident parent. The principle that maintaining contact is generally conducive to a child’s welfare is repeated in *White v White*⁷. Both *Sanderson v McManus* and *White v White* assert that decisions about whether contact is in a child’s best interests must be based on the circumstances of the individual case and the evidence before the court. They both assert that in reaching a decision the child’s welfare must be the paramount consideration.

As noted in the earlier discussion about ‘best interests’, the idea that courts use evidence to inform their decision about a child’s best interests is not necessarily a

⁵ 2012 Fam L.R.

⁶ 1997. S.L.T 629

⁷ 2001 S.C 689

neutral one. Unlike other jurisdictions, Scots law has resisted a ‘welfare checklist’ that outlines what courts must consider when weighing a child’s interests (Tisdall, 1996). Lord McCluskey addresses this issue in *White v White*⁸, he states that:

‘It must always be a matter of weighing all the material bearing upon welfare and the interests of the child. It would be impossible to list all the other matters that might be relevant, because life constantly throws up unprecedented circumstances; and the law has to be flexible enough to cope with the unforeseen.’

While there is no welfare checklist, case law does reveal some key issues that are considered when weighing a child’s best interests. For instance, earlier decisions like *Brixley v Linas* started from the premise that young children need to be with their mothers. More recently in *Treasure v McGrath*⁹ (which is examined more closely in the amendment on domestic abuse), Sheriff Morrison referred to the ‘commitment, attachment and motive’ of a parent when considering a father’s application for parental rights and responsibilities. He elaborates on how he weighed the child’s best interests in this case:

‘..the test was “what is in the best interests of the child?”. In answering this question it was necessary to consider all the factors relevant to the paramount consideration of the welfare of the child, including: (1) the degree of commitment by the applicant to the child; (2) the degree of attachment between the applicant and the child; (3) the importance of that commitment and attachment to the child's welfare; (4) the reasons or motives of the applicant in applying for the order; (5) whether the applicant would take account of the child's views, where appropriate; (6) any need to protect the child from conduct of a person; (7) where the applicant and a parent or other person having parental responsibilities and rights have to co-operate in matters affecting the child, whether they can do so; and (8) whether it is better for the child that the order be made than that no order should be made.’

As noted in the earlier discussion, the best interests principle is often criticised on the grounds that it can be indeterminate. Further criticisms about the transparency or opportunity to challenge a Sheriff’s judgement of a child’s interests can be made

⁸ see 7.

⁹ 2006 Fam.L.R

when we consider cases such as *J v J*¹⁰. This illustrates the reluctance of appeal courts to disturb a court's decision based on a Sheriff's determination of a child's best interests. Case law reports that the reason for this is that, unlike the original Sheriff, the appeal court does not have opportunity to review all the witnesses and evidence. However it may also be construed as a further example of how what is in a child's best interests can be somewhat opaque.

In the recent case of *B v G*¹¹ the Supreme Court examined the paramouncy of the welfare principle as well as the way in which contact disputes were conducted. While the Supreme Court was content that the original Sheriff's decision not to award contact had been made in the child's best interests, they were far from content about the way the dispute had been conducted and the impact that this had on the child. The proceedings had begun when the child was four years old and ended when the child was nine years old. Lord Reed commented that:

‘The glacial pace of the proceedings was itself inimical to the best interests of the child.’

He went on to say that there had been no need for the proceedings to take so long and did so ‘only because the court allowed the parties to determine the rate of progress’. Lord Reed's criticism centred on the ‘professional advisers’ (including solicitors) who he claimed that rather than concentrating on the welfare of the child, focused on ‘every byway in the relationship between the parents’. He went on to criticise the overlong proof that had resulted from counsels' leading of evidence and expansion of scope of pleadings. Lord Reed commented further that:

‘...a judgment will most clearly address the central issue in the case if it focuses directly upon the factors which are relevant to the court's exercise of its discretion, rather than concentrating primarily upon the myriad questions of fact which may be in dispute, many of which may be peripheral to that central issue. It is of course essential that the court's findings on any relevant matters of fact should be made clear, but that can be done within the ambit of a judgment whose primary focus is upon the central issue, and which in

¹⁰ 2004 Fam LR 20

¹¹ 2012 UKSC 21

consequence demonstrates the nexus between that issue and the findings of fact.’

This highlights a problem with how evidence is presented and dealt with in disputes about contact. Lord Reed’s indicates that courts should focus on the central issue and not be distracted by the detail of disputed facts. However the lack of clarity around ‘best interests’ may mean that this may not always be obvious. Moreover in cases of domestic abuse, the detail of the relationship between parents does matter. While *B v G*¹² does not appear to be about domestic abuse, the evidentiary issues that highlighted in this case are undoubtedly a concern for cases of disputed contact that do involve domestic abuse.

4.2 Children’s views

*Shields v Shields*¹³ is the leading case on the importance of ascertaining a child’s view. In this case about residence, the fact that no consideration had been given by the Sheriff at any point to ascertain the child’s views alone presented grounds for appeal. The child in question was seven and a half when the proceedings started and aged nine when Sheriff finally made his order. The original decision was subsequently overturned during appeal as a result of hearing the child’s views. During the appeal to the Extra Division, it was found that the only appropriate test in relation to ascertaining the child’s views ‘is one of practicability’. Lords Marnoch and Dawson and Lady Cosgrove further commented on the mechanisms appropriate for ascertaining a child’s view:

‘Of course how a child should be given such an opportunity will depend on the circumstances of each case and, in particular, on his or her age. At one extreme, intimation in terms of form F9 may be appropriate whereas, at the other extreme, a much less formal method will be appropriate. Seeing a child in chambers is, of course, always open to the court but, in the case of a very young child, we do not discount the possibility that his or her views, or the lack of them, could properly be made known to the court through the agency of, for example, a private individual who is well known to the child or perhaps by a child psychologist. But, if, by one method or another, it is

¹² see 11.

¹³ 2002 SLT 579

“practicable” to give a child the opportunity of expressing his views, then, in our view, the only safe course is to employ that method. What weight is thereafter given to such views as may be expressed is, of course, an entirely different matter.’

These comments set a high bar for the court’s responsibility to ascertain a child’s views in disputes about contact. They establish that, while a child’s age and circumstances should influence the method for ascertaining a child’s views, practicability is the only test appropriate for whether the court should attempt to ascertain a child’s views.

In a more recent case, the issue of time lapsed between children’s views being sought and an order being made was raised. In *C v McM*¹⁴ the children’s views had been ascertained sixteen months before the order had finally been made. This had been when they were aged six and eight years old. The mother had appealed against the Sheriff’s decision to order residence in favour of the father, as the Sheriff had not sought the children’s ‘recent’ views. Sheriff Principal Kerr commented during the appeal that:

‘I take the position in light of *Shields* to be that the court is obliged right up to the time of making an order under s 11 to see to it that the child affected has been given an opportunity to express a view at least once to the court, but not necessarily more than once, by some appropriate method.’

During the original case the Sheriff gave ‘anxious’ consideration about whether the children’s views should be taken again but had decided against it. On appeal, Sheriff Principal Kerr commented that unlike *Shields v Shields*¹⁵ in *C v McM*¹⁶ the children’s views had been taken. As such, it was at the discretion of the court to decide whether their views should be sought again. It was for the Sheriff to decide whether the time passed had represented a material change of circumstances that would require a further opportunity for the children to express their views. Thus perhaps limiting the court’s responsibility to ascertain a child’s ‘up-to-date’ views.

¹⁴ 2005 Fam. L.R. 36

¹⁵ see 13

¹⁶ see 14

The issue of the ‘practicability’ of seeking a child’s views was recently addressed in *S v S*¹⁷. In this case, the child’s lack of knowledge about the court proceedings and the issues they pertained to limited the extent to which their views could be ascertained. Subsequently, the Sheriff attached little or no weight to the child’s views when weighing the child’s best interests, despite the views having been sought, albeit in a hypothetical way. During the appeal, the Sheriff’s approach to ascertaining and weighing the child’s views was approved. It was reported that:

‘As with regards to B’s views, such as they were...the sheriff had committed no error of law in according them little or no weight. B was still only six years old; at the time of the proof he had no knowledge of the proposed relocation and thus no basis on which relevant views might be expressed; and even now, having been distressed by being told of his parents’ bitter disagreement, he was in no position to judge the implications of what was proposed. More importantly, PB (court reporter) had clearly felt it inappropriate (in B’s interests) to seek his views directly on any aspect of the dispute, and BF had given compelling evidence as to the likely harm to B if he were led to feel guilt or responsibility for the eventual outcome. The sheriff had fallen into no error in dealing with this sensitive matter as he did.’

These comments reveal that the child’s knowledge of the dispute affects the weight that the court attaches to the child’s views. The comments also show how the court is reluctant to seek the child’s views, if doing so risks causing the child distress or harm. This highlights how the child’s perceived vulnerability may act as a barrier to their participation.

In their review of case law, Tisdall and Morrison (2012) find that age is now less likely to be used as a threshold for children’s participation in Scots law. Rather age is a factor that courts will consider when attaching weight to children’s views. Tisdall and Morrison further report that descriptions of children’s views are often divided between ‘consistent, definite and clear’ and ‘ambivalent or anxious’. Children whose views are consistent and clear are attached more weight than those who are ambivalent or anxious (e.g. *K v K*¹⁸ and *H v H*¹⁹).

¹⁷ 2012 Fam. L.R.

¹⁸ 2004 Fam LR 25

Tisdall and Morrison (2012) also report that while the word ‘manipulation’ was not used in any of the cases that they reviewed, there were undercurrents of this in reported cases. For instance in *Ellis v Ellis*²⁰, this was framed around the children being pressured by parental presence or by material bribes. They concluded that where children’s views were considered to have been influenced they were ‘fundamentally weakened’ (p163). Their argument is given further weight by a recent case. In *C v M*²¹ the Sheriff refused to grant a specific issue order that would have permitted the mother and children to relocate to New Zealand. The Sheriff’s decision was contrary to the children’s expressed views. The Sheriff made clear that he thought the mother had influenced the children’s views and this influence had repercussions for the weight he attached to the children’s views:

‘In my opinion, significant caution requires to be employed in assessing the weight to be given to those views....[I]t is clear that [the]manner in which the children’s views have been formed has been managed and influenced by [their mother]...’

The final issue to consider under ‘children’s views’ is the issue of confidentiality. As discussed under the review of legislation, children may be reluctant to express a view if they are not confident that they will be kept confidential from one or both parents. The disclosure of children’s views may have negative consequence for children’s welfare. These concerns can be magnified when a child is afraid of a parent, as may be case where there is evidence of domestic abuse. However, treating children’s views as confidential may conflict with parents’ rights to a fair trial. In *Dosso v Dosso*²², a father sought contact with his children. The elder boys aged fourteen and twelve asked for their views to be kept confidential because they were fearful of their father’s reaction to them. The Sheriff did treat their views confidentially and they were not made known to their father. The Sheriff reported that:

¹⁹ 2010 SLT 395

²⁰ 2003 Fam LR 77

²¹ 2012 G.W.D 9-170

²² 1999 S.L.T (Sh. Ct) 80

‘[F]or a child to be able to express his views ‘freely’ he must be able to feel confident in privacy if he so wished and the court should respect that privacy except in compelling circumstances.’

*McGrath v McGrath*²³ provided a different view on the issue of children’s views and confidentiality. At appeal, the Sheriff Principal stated that the starting point should be that ‘a party is entitled to full disclosure of all materials’ and that it is after this that consideration must be given to whether such disclosure would harm a child. This shows a difference in the priority given to treating children’s views as confidential. There have not been any recent cases about confidentiality, perhaps as Raitt (2007) suggests, Sheriffs are able to manage these issues and tensions with some ‘finesse’.

4.3 Conceptualisations of domestic abuse

Morrison et al (2013) highlight that even though Section 11 (7A-7C) of the Children (Scotland) 1995 Act makes specific provisions for domestic abuse in contact disputes, there are surprisingly few cases that report on how this legislation is interpreted or used. This review identified four reported cases over a seven year period that made specific reference to the provisions made by the Family Law (Scotland) Act 2006 on domestic abuse. This is surprising when we consider that research shows a high proportion of families who resort to court to resolve disputed contact have histories of domestic abuse (e.g. Hunt and McLeod, 2006). As noted in Morrison et al (2013), this perhaps suggests that domestic abuse is considered in the general weighing of a child’s best interests. It may also be interpreted as evidence that domestic abuse is often unexposed in family actions as Hester (1997), Piper (2000) and Trinder (2010) suggest. Further empirical work is necessary to fully understand why the provision is not used as frequently as one might expect in circumstances where domestic abuse is an issue for a high proportion of families who resort to court.

²³ 1999 Fam LR 83

We now turn to the four cases that were identified in the review. *Treasure v McGrath*²⁴ was the first case to have considered the provisions about protecting children from abuse or the risk of abuse and whether making an order requires parties to co-operate. In this case the pursuer (an unmarried father) sought parental rights and responsibilities. The defender (mother) opposed this application; she alleged that his ‘conduct had caused, fear, alarm and distress’ to both 10-year-old E and the defender. She also claimed that, if granted parental rights and responsibilities, he would use them to interfere, control and enforce his views of how his daughter should be brought up. The evidence that the defender produced about abuse related to four events that occurred post-separation and were connected with the education and living arrangements of E. There was no mention in the reported case about domestic abuse that had occurred before separation or about abuse that had been specifically targeted at the defender. From the reported case it was not clear whether there was abuse before separation. It is not clear whether the abuse was ‘classic’ domestic abuse or whether this was an example of post-separation conflict.

The lack of a robust analysis of nature and context of abuse is important when we consider Johnson’s (1995) typologies of violence and Stark’s (2007). In family actions, the nature of domestic abuse is often addressed by examining specific events. Findings of fact and proofs tend to focus the evidence available to prove whether particular incidents were carried out at particular times. This has the potential to ignore the context in which these incidents occur. In the case of domestic abuse a focus on events alone ignores that these events are part of a larger context where one partner uses violence and other tactics to control the other.

During the case, Sheriff Morrison questioned the necessity of the provisions made by s11 (7A-C). He stated that courts already give consideration to abuse when weighing a child’s best interests. The Sheriff commented on the suitability of the word ‘abuse’ used in the legislation. He described it as ‘pejorative’ and noted the defender’s counsel’s concern about its ‘emotive’ connotations. He went on to suggest that the word ‘abuse’ would be better replaced by ‘conduct’. Sheriff Morrison did not

²⁴ 2006 Fam. L.R. 100

elaborate further on this point, but his comments perhaps point to a reluctance or resistance to deal with the subjectivity of abuse or to an expansion of the behaviours that might be included in a definition of abuse. The Sheriff's comments also point to a particular tension that exists regarding how family law deals with domestic abuse; the extent to which family law should treat domestic abuse in a neutral manner. Sheriff Morrison's suggestion to replace the word 'abuse' with 'conduct' could potentially defuse and neutralise the impact of the provision and any stance against domestic abuse that the law makes.

Ultimately in this case, the pursuer was not awarded parental rights and responsibilities. However Sheriff Morrison had rejected the claim that there was a need to protect E or her mother from abuse or risk of abuse. This decision was based on the Sheriff's assessment of level of the fear that E had concerning her father. He concluded that there had been occasions where E had been frightened or distressed by her father's behaviours, for instance when E's father 'made' her get into his car for a contact visit against her wishes. However he did not believe that she lived in *constant* fear of him. He said that her behaviour towards her father did not indicate that of a frightened child. Sheriff Morrison sets a high threshold for the level of fear a child must have before contact would be considered against their interests. Fear has to be relentless, not linked to incidents. The Sheriff's interpretation also assumes that children behave or respond to abuse in a particular way; namely that they will be living in constant fear of the abuser. The reported case did not make any reference to the level of fear the defender had in respect of the pursuer despite the provisions in law for the effects that contact may have on the non-resident parent. The Sheriff did find in favour of some of the defender's claims and evidence that the pursuer was both 'controlling and manipulative'. For instance, the pursuer did not return keys to the defender's flat for some time and would come and go as he pleased; he did not help with E's care if it were not a day on which he had contact; and he did not have contact with E for several weeks after she revealed her views against him which was interpreted as a punishment. These are all examples of behaviours which when taken together, can form a pattern of abuse. The Sheriff's use of the language 'controlling

and manipulative’ mirrors that of the domestic abuse literature with a focus on both the intention and impact of behaviour.

Sheriff Morrison concluded that the E’s distress about her father stemmed from her feelings that he did not listen to or take account of her views, not because of any abuse. His decision to not award parental rights and responsibilities was based on the lack of strong attachment between E and her father not on evidence of abuse or fear. Without a strong attachment between child and parent, Sheriff Morrison did not see how it was possible to award parental rights and responsibilities. He further commented on the lack of trust that existed between parents. He highlighted the necessity of some degree of co-operation amongst parents if parental rights and responsibilities are to be shared.

In *R v R*²⁵ the pursuer (a non-biological father) sought parental responsibilities and rights for a 9-year-old girl called A. The defender (mother) resisted this application. The Sheriff ordered letterbox contact that the child did not have to respond to. *R v R* provides insights into how abuse is understood and defined in law. In the reported case, the relationship between pursuer and defender was described as ‘volatile’. This suggests that the relationship is unpredictable, not that one party’s behaviour was unpredictable or unacceptable. The use of ‘volatile’ has the potential to provide both an inaccurate and misleading description of the parental relationship in *R v R*. While the case reported that both parents argued and shouted in the presence of the children, it also revealed that the pursuer was by far the aggressor in the relationship. Unlike the defender, the pursuer was found to: have struck two of A’s siblings in what was considered to be beyond reasonable chastisement; had at least one conviction for assaulting the defender; had threatened the defender; and had a criminal charge from an incident at the defender’s parents’ home. From the details in the reported case it would seem more accurate to describe the pursuer as volatile, not the relationship. This distinction is especially important given that it is the child’s relationship with the pursuer that is in question. Describing the parental relationship as volatile obscures what might be the defender’s concerns surrounding contact.

²⁵ 2010 Fam. L. R

However Sheriff Holligan does go on to address explicitly with whom responsibility for abuse lies: *“I do not overlook my conclusion that the defender may herself have engaged in certain verbal exchanges with the pursuer. Nonetheless the predominant cause of abuse within the relationship is the responsibility of the pursuer.”* The issue of responsibility for abuse is an important one and is addressed in the following chapter.

During the case Sheriff Holligan comments on the abuse provisions in the legislation. He notes that the definition of ‘abuse’ used in the statute is more expansive than other definitions of the word. This implies that the threshold set for behaviour that might be categorised as abuse is lower than one might expect. The Sheriff also comments that the definitions used in the legislation are somewhat circuitous. He argues that s 11 (7) (c), which refers specifically to domestic abuse, is already addressed in by the legislation’s definition of abuse. He argues that the inclusion of domestic abuse as a separate category does not substantively add to the legislation.

The Sheriff also comments *“Parliament has not gone so far as to provide that findings of abuse or the risk of abuse give rise to any presumption against the granting of an order”*. Thus abuse or risk of abuse in of itself does not preclude the ordering of contact. Rather it is an issue that is considered when weighing a child’s best interests. In this case the Sheriff also reports that it does not matter who is the direct target of the abuse . Although not intentionally abusive to A, the pursuer was abusive to her siblings, which had affect on A.

*S v B*²⁶ echoes *R v R*’s²⁷ finding that abuse does not need to be directed at the child when the court considers the ‘abuse’ provisions of the Act. In this case, the pursuer (father) sought a contact order, which the defender (mother) opposed. The defender sought to remove the pursuer’s parental rights and responsibilities. The parties’ relationship had ended when the defender was pregnant with the pursuer’s child. The

²⁶ 2012 GWD 32-663

²⁷ See 25

reason for this was because of the pursuer's use of illicit drugs. The pursuer and his family had threatened the defender with violence, assaulted her stepfather and vandalised her and her parents' respective homes. Following this, the defender and her parents had moved from the area they had lived because of their fear of the pursuer and his family. Sheriff Cusine refused the contact order and terminated the father's rights and responsibilities. The Sheriff dismissed the father's claims that as the abuse had not been directed at the child, and the child was too young to understand the impact that the abuse had on her mother, contact should go ahead. Instead, the Sheriff found that the abuse that the court had to protect the child from did not need to be directed at the child. He found that it was not in the child's best interests to have contact with her father when her mother was 'justifiably fearful of' him. The Sheriff elaborated on this point. He stated that the mother's anxiety about contact or the repetition of abuse would have adverse effects on the child. This finding illustrates how in the context of domestic abuse, the interests of children and the non-abusing parent can overlap. The impact that abuse has on a mother can influence the welfare of the child. In the reported case, Sheriff Cusine also addressed the issue of co-operation amongst parties who share parental rights and responsibilities. He said that if the father had retained parental rights and responsibilities there was a danger that he and his family would use these to threaten the mother in the future. These comments illuminate how embroiled children can become in domestic abuse and conflict and how parental rights and responsibilities have the potential to become a focus for this. They also show how courts may consider the actions of the wider family as relevant when weighing a child's best interests.

*S v J*²⁸ is the most recent reported case that makes reference to the 'abuse provisions' of the Act. In this case the Sheriff awarded supervised contact between a 23-month-old child and her father. The father (pursuer) sought parental rights and responsibilities for and contact with the child. The mother (defender) opposed this action because he had previously been violent towards a stepchild from a previous relationship and had been abusive and manipulative towards her. The mother claimed

²⁸ 2012 C.S.O.H 49

to also be concerned that the father would abduct the child to Iran where his family lived. At the time the order for supervised contact was made, the child had not seen her father since she was 7 weeks old. This had followed an incident where the father threw the child and mother out of their home in England. The mother and child had since moved to Scotland to live with the child's maternal grandparents.

Of particular note from this case are Temporary Judge Beckett's comments about the weight given to previous abuse and violence towards children and the severity of abuse carried out by the pursuer. In awarding supervised contact, the Judge shows that there is no presumption against contact even when there is proof of domestic abuse or of abuse that was carried out on another child. In this case, the Judge accepted that the father had been violent and abusive towards a stepchild from a previous marriage. He also accepted that the pursuer had been violent and abusive to his previous wife. However he considered the deterioration of the relationship between the pursuer and his ex-wife as well as his ex-wife's mental health, as factors that militated risk that was posed by pursuer through contact with X.

The Judge accepted that the pursuer had been 'controlling and volatile' towards the defender. However he considered it important that the pursuer had not been *violent* towards the defender or the child in question when weighing the child's best interests. He also noted that the defender was not fearful of the pursuer. On the issue of risk posed by the pursuer, the Judge commented it could be 'all but eliminated by ensuring that contact takes place under supervision'.

These findings concur with *R v R*²⁹ that domestic abuse is one factor that is considered when weighing a child's best interests. Proof of domestic abuse in previous and current relationships does not preclude contact. The circumstances and the nature of the abuse carried influences decisions. From *S v J* it would appear that proof of violence might have more influence rather than that of 'controlling or volatile' behaviour.

²⁹ See 25.

4.4 Summary

From this review of case law a number of issues emerge as important for how the theoretical concepts of this research are addressed in law:

Best interests

The review established that the child's best interests are the sole criterion when courts make orders for contact. *Sanderson v McManus*³⁰, highlights that there is no legal presumption for contact, however there is an assumption that is generally conducive to the child's welfare for contact to be maintained. Scots law has resisted any welfare checklist approach when weighing a child's interests. Instead, the court will consider the individual circumstances of the child and the evidence that is before the court as evidenced by *White v White*³¹. However, case law does reveal the particular issues that courts consider when weighing a child's interests: a maternal preference for younger children (e.g. *Brixley v Linas*) and in *Treasure v McGrath* the 'commitment, attachment and motive' of a parent. The recent case of *B v G*, reveals problems with how evidence is presented and dealt with in disputes about contact, the time it may take to resolve disputes and the impact that this has on children.

Children's views

Shields v Shields sets a high bar for the courts responsibility to ascertain a child's views in disputes about contact. It establishes that the only appropriate test is practicability. The issue of whether children's views are taken on more than one occasion was addressed in *C v McM*³². It found that the court only has a responsibility to provide the child one opportunity to express their views. Any further opportunities are at the discretion of the court. While the word 'manipulation' does not appear in case law, there is evidence that this is an issue of concern for courts. *Ellis v Ellis*³³ highlights that the weight attached to a child's views is undermined if the court deems their views to have been influenced by a

³⁰ 1997 S.L.T 629

³¹ 2001 S.C 689.

³² 2005 Fam. L.R. 36

³³ 2003 Fam LR 277

third party like a parent. The review of case law found conflicting evidence about whether children's views are treated confidentially in law.

Domestic abuse

Treasure v McGrath highlights how domestic abuse is evidenced and viewed in court. In this case, the Sheriff was presented evidence of specific incidents of abuse. The courts focus on these incidents rather than the context of the relationship (for instance whether there was history of abuse pre-separation) may potentially obscure the nature of domestic abuse. *R v R* also highlights the importance of language and how issues of responsibility are addressed when discussing domestic abuse in court.

Treasure v McGrath demonstrates how a child's fear of a parent can be used to gauge the seriousness of abuse. Children are expected to display consistently high levels of fear before the abuse provisions will influence a court's decision against contact. Both *R v R* and *S v B* indicate that the child does not need to be the direct target of the abuse for the abuse provisions to be considered. The law understands that children are adversely affected by living in an environment of abuse even if they themselves have not been directly abused. *S v B* shows that the court is willing to consider that the impact of abuse on the resident parent can have direct and negative consequences for children when making decisions about contact. This underlines how enmeshed the interests of children and mothers become in the context of domestic abuse.

Finally both *S v B* and *S v J* demonstrate that findings of domestic abuse and abuse towards other children do not necessarily preclude the ordering of contact. There is no legal presumption against contact when there are findings of domestic abuse. Case law shows that domestic abuse is simply one of the many issues that a court will consider when weighing a child's best interests.

5 Conclusion

This chapter has reviewed the Scottish legal framework that deals with disputed child contact. From this, the theoretical concepts that are important for the thesis were established. These are: ‘best interests’, ‘children’s views’ and ‘conceptualisations of domestic abuse’. The review identified key debates and issues around the concepts ‘best interests’ and ‘children’s views’. It then reviewed the existing Scots case law for the three concepts.

The next chapter examines the research evidence about child contact and domestic abuse in more depth. It also explores in more depth theoretical discussions about how domestic abuse is conceptualised and the implications this has for disputes about contact.

Review of the literature on contact, children and domestic abuse

1 Introduction

The issue of child contact when there is domestic abuse has gained increased prominence in research, policy and legislation in recent years. This has been against a backdrop where the issues involved have become increasingly heated and contested. As Flood (2010) notes, this has in part been fuelled by the opposing aims and different priorities of fathers' rights and domestic abuse groups when it comes to family law. Fathers' rights groups advocate and campaign on behalf of men who claim to be victims of discrimination by family courts. These groups argue that the legal system is biased against them, favouring mothers in post-separation arrangements at their expense. They often claim that mothers fabricate allegations of domestic abuse in order to prevent contact between fathers and their children. On the other hand, domestic abuse groups that advocate and campaign on behalf of women claim that family courts do not take domestic abuse seriously in post-separation parenting arrangements. They argue that a 'pro-contact' stance means that family courts overlook and downplay domestic abuse (Flood, 2010). These opposing claims may act to polarise the debate on child contact and domestic abuse.

In other jurisdictions like Australia, and more recently in England and Wales, the fathers' rights movement appear to have made 'gains' in the areas of post-separation parenting. Major reforms in Australia led to a presumption of children's shared residence amongst parents. Despite the evidence from Australia post-reform (e.g. Chisholm, 2009; Gilmore, 2008), that enforcing shared parenting is not necessarily in children's interests, reforms in England and Wales currently point towards a similar presumption for shared parenting. The Children and Young People's legislation,

which will lead family law reform in England and Wales, includes provisions that aim to reduce litigation about family actions. These include requiring parents to attend mediation before they are able to make an application for family proceedings. However, a history of domestic violence would exempt families from this requirement.

So far there does not appear to be the same appetite for shared parenting as a post-separation solution in Scotland. As the previous chapter demonstrates, while there is a general assumption in Scot's law that contact is in a child's interests, there is no legal presumption for contact. Orders for contact are made only when they are deemed to be in a child's best interests. The law recognises that there may be circumstances such as domestic abuse where contact with a non-resident parent is considered contrary to a child's interests. However, Scots law has not gone so far as to make a presumption against contact when there is domestic abuse. There is therefore a degree of ambiguity about the circumstances where presence of domestic abuse means that contact is contrary to a child's interests, or that contact must be limited or supervised.

This chapter elaborates on why domestic abuse can be problematic for children's contact with a non-resident father. It begins by examining the evidence that argues that contact with non-resident fathers is 'good' for children and discusses the benefits for children associated with a child's contact with a non-resident parent. The chapter identifies the circumstances where research has found contact to be detrimental to children and highlights these findings' relevance for cases of domestic abuse. The review then focuses on the domestic abuse literature. It considers the different conceptualisations of domestic abuse and their implications for considering contact when there is domestic abuse. The review then examines the existing research about post-separation abuse and the potential that contact has to become a focus for this. It discusses the evidence on children's exposure to domestic abuse, the impact that it has on children, as well as the little research that exists on abusive fathers' parenting. The chapter concludes by reviewing the limited evidence on children's own perspectives of contact with fathers when there is domestic abuse. It points to the

gaps in knowledge in this area and establishes the context for this research on children's experiences and views of contact when there is domestic abuse.

2 Methodology for literature review

Identifying literature was an iterative and on-going process throughout the research. My previous work experience at Scottish Women's Aid meant I was familiar with key literature on children's experiences of domestic abuse and with some of the literature about domestic abuse and child contact. I had also collected a substantial amount of literature in this area for my MSc in Childhood Studies dissertation in 2007. This served as a starting point for the literature review. Stanley's (2011) comprehensive review of research on children and domestic abuse provided a wealth of references on the area of children and domestic abuse that I was able to consult and include in the review. I carried out further bibliographic searches to elaborate on particular issues, for instance on the links between children's contact and children's wellbeing. I also carried out searches on particular journals that I knew to publish articles on this subject area. For instance, searches in domestic abuse orientated publications like *Violence Against Women* and the *Journal of Interpersonal Violence*. I also carried out searches in socio-legal journals like *Family Court Review*, *Child and Family Law Quarterly*. When searching I used the key words: 'contact,' 'visitation', 'custody', 'residence', 'domestic violence' and 'domestic abuse'.

2.1 The importance of children's contact with non-resident fathers

There continues to be social anxiety about levels of family breakdown. Concerns often centre on rising numbers of lone parents and the impact that this may have on children. This has led to an increased research focus on the outcomes for children whose parents have separated. In a meta-analysis of the research evidence on the impact of divorce on and separation on outcomes for children, Rodgers and Pryor (1998) report that children from separated families may experience a range of poorer

economic, social, psychological, and health related outcomes than others. However, they report there is not a simple or direct relationship between parental separation and these negative outcomes. Instead, a number of intervening factors before, during and after separation can contribute to both positive and negative outcomes for children.

Contact with a non-resident parent is often regarded as a way to ameliorate the negative effects that parental separation can have on children. In Amato and Gilbrath's (1999) meta analysis of 63 studies of non-resident fathers and children's wellbeing, the authors argue that children who continue to have a warm and close relationship with a non-resident father who pays child support tend to do better than other children. This link between a child having a close relationship with a non-resident parent and a child's adjustment is repeated in findings from Dunn et al's (2004) UK longitudinal study on the adjustment of 162 children whose parents were separated. King and Sobolewski's (2006) US survey of 453 adolescents also found that a positive relationship between the non-resident parent and child contributes positively to a child's adjustment.

Herring (2007:504) suggests that contact can reduce children's feelings of rejection, maintain relationships with both parents and their wider family, develop their identity and assist their understanding of their parents' separation. However, research around the impact contact has on children is far from conclusive. This appears to stem from contradictory findings and the methodological limitations of studies. Gilmore's (2006) review of child contact research cautions against drawing general conclusions from existing studies. He argues that studies often vary in quality and that many disclose a range of methodological limitations. Studies vary in how they define contact, as well as in sample sizes, and methods used for data collection. Existing studies tend to focus on community samples, rather than on court samples where parents (and perhaps children) cannot agree on contact arrangements.

2.2 Qualifying the benefits of contact

While the earlier section demonstrated that contact may be positive for children, research also consistently finds that it is the child's relationship with a resident parent that is most influential in a child's adjustment.. Dunn et al, (2004) report that a positive relationship between child and non-resident parent is linked to the child's relationship with resident parent, as well as the quality of the relationship between the resident and non-resident parent. The authors conclude that children's relationships with non-resident parents need be considered in the broader context of the child's familial relationships, not seen as a relationship that exists in isolation. King and Sobolewski (2006) also report that while they found non-resident fathers' involvement with children to be beneficial, the correlations between this and measures of children's wellbeing were modest. The study found the child- resident mother relationship to have greater effect on a child's wellbeing. These findings present dilemmas for circumstances where contact adversely affects the relationship between the child and resident parent. It may not be in a child's interests for contact to take place if it undermines or has negative consequences for the relationship between children and their resident parents.

The influence that the frequency or quantity of contact has on outcomes for children provides contradictory research results. Dunn et al (2004) report that children with frequent contact have better outcomes. However, Amato and Gilbreth's (1999) meta-analysis found no relationship between the frequency of contact and children's well being. They comment that rather than focussing on the frequency of contact, attention should be paid to the quality of the relationship between child and non-resident fathers. They suggest there should be a focus on what goes on during contact, and on issues like authoritative parenting and commitment to parenting. Similar findings are reported in King and Sobolweski's (2006) US analysis. They found no direct relationship between frequency of contact and child adjustment. Findings from Trinder et al's (2008) longitudinal UK study on the relationship between contact and child adjustment in high conflict cases are especially relevant to this study. The study interviewed 156, 129 and 108 parents involved in legal disputes about contact at three different time points. The sample for this study was the same

across the different sweeps of the research. The reduction in the size of the sample reflects attrition that occurred across three time points of the study. Trinder et al report that across the sample, children (especially boys) had poorer levels of adjustment when compared with children from a community sample. This suggests that particular attention should be paid to the adjustment of children whose parents are involved in legal disputes. They found no relationship to exist between children's adjustment and the amount of contact that takes place with a non-resident parent, and that the most positive adjustment was found in children whose resident parent had less concern about the parenting capabilities of the non-resident parent.

A wealth of research echoes the point that for contact to be positive the *quality and nature of the parenting by the non-resident parenting is crucial*, not contact per se (Kelly, 2003; Dunn, 2005; Weir and Sturge, 2006; Gilmore, 2006). Hunt and Roberts (2004) report that contact can be damaging to children if a non-resident parent poses a risk. This idea is further developed by McIntosh and Chisholm (2008) in their analysis of the outcomes for post-separation shared parenting in high conflict families. This study examined outcomes for 111 children whose parents were involved in legal disputes about the care of their children post separation. They argue that shared parenting arrangements in circumstances of high conflict may pose risk to children's emotional wellbeing. This is supported with their finding that four months following the legal settlement of the parental dispute, 28% of the children displayed high levels of emotional distress. The study also highlights the relevance that parental co-operation has in post-separation parenting arrangements. McIntosh and Chisholm found that in 73% of cases parents report 'almost never' co-operating post court, and that in 39% of cases parents report 'never' being able to protect their children from their conflict.

Further research shows that contact can be damaging if it provides opportunity for a child to be caught up in parental conflict (see Harold and Murch, 2005 for an overview). This point is supported with Grych's (2005) findings on the effects of interparental conflict on children. He argues that 'destructive conflict' (parental conflict that is hostile and unresolved), has particularly negative consequences for

children. Grych concludes that a small but significant minority of children whose parents' levels of conflict remain high for years following divorce, are particularly vulnerable to 'enduring problems'. We turn to this idea later in this chapter's discussion on post-separation abuse and the overlap it often has with contact arrangements (Prior and Rodgers, 2001: 272).

Taken together, these findings present a complex picture about the importance of contact and the benefits it can have for children. In general, contact may well be positive for children but this does not mean that contact is positive in all circumstances. Contact with a non-resident parent is not necessarily the most important issue when considering a child's adjustment following parental separation. Research shows that the child's relationship with their resident parent to be more influential. Contradictory findings on the relationship between frequency of contact and outcomes for children are reported in general population studies, raising questions about whether more consideration should be given to the nature of contact and familial relationships, rather than contact per se. Research consistently finds that the quality of contact and parenting are crucial for children's outcomes. Levels of parental conflict, how long this conflict endures and whether parents are able to protect children from this conflict also influence the outcomes that contact has for children. The next section examines children's views about contact following parental separation.

2.3 Research with children about contact with non-resident parents

Chapter Two has already discussed some of the research with children about contact. In reviewing the 'childhood studies' research on parental separation, a number of further themes relevant to this research emerge. While in general, children report being sad about parental separation across studies (e.g. Bagshaw, 2007; Neale, 2002), a minority of children report being relieved about the separation. The children who express feelings of relief also report being exposed to parental conflict and violence prior to separation (e.g. Campbell, 2008). One of the most concerning issues for children relates to a sense of uncertainty about their parents' commitment to them

following parental separation (e.g. Bagshaw, 2007). Some children express deep unhappiness about the relationships they have with non-resident parents, describing a sense of ‘diminished commitment’ to them, whilst contact can perhaps mediate this, these feelings exist for some children who do have contact and those who do not have contact (Wade and Smart, 2002).

Children are often dissatisfied about the level of information about the separation offered to them by their parents. This concern relates both to the separation itself and resulting legal proceedings (e.g. Wade and Smart, 2002; Marshall et al., 2002; Buchanan et al 2002). The circumstances of separation may mean it is difficult for parents to provide information and support to their children. Children report reticence about discussing the separation with their parents, fearing that by doing so they will cause upset or distress. The idea of ‘silence’ around separation is supported by Dunn and Deater-Deckard’s (2001) large-scale study of children 456 whose parents had separated. They reported that only 5 per cent of children felt they were encouraged to talk to their parents about the circumstances of separation.

The importance of sibling relationships in helping children to deal and cope with divorce has been highlighted in the literature. Sheehan et al’s (2004) mixed method study compares the quality of adolescent sibling relationships in 137 divorcing families with 165 intact families. The authors find that adolescents from the divorcing families group were significantly more likely to report sibling relationships that had high levels of both warmth and hostility than those adolescents from intact families. This was related by the adolescents to their experiences of divorce, as well as the degree of parental conflict in their families and absence of fathers in their daily lives. The authors conclude that sibling relationships can protect children from the adverse affects of divorce and separation. They argue that siblings’ relationships can provide consistency and certainty during a time where children are experiencing significant family change. As a result, siblings’ access to one another is an important consideration when decisions are made about contact and residence.

The role that children play in decision-making about contact and residence is well debated. As was demonstrated in *Chapter Two*, concerns about involving children in decisions originate from a desire not to ‘over-burden’ them, and, from fear that involvement may leave children vulnerable to manipulation by one or both parents (Taylor et al., 2007). Studies show that while many children do not want sole responsibility for ‘choosing between parents’, they do want their views considered (e.g. Neale and Smart, 1998). Children living in families that are oppressive or abusive are more likely to want to have a greater role in formal ‘out of family’ decision-making than those living in ‘democratic’ families (Neale, 2002). Findings that children who have experience of abuse or violence are more likely to want a greater say are repeated in other studies (e.g. Taylor, 2006). Cashmore and Parkinson (2008) provide particular insight into the influence children want to have in resolving disputes about contact in this context. As part of their study they interviewed 47 children about their participation in decisions about residence and contact. They found that children involved in uncontested matters were more likely to be content for their views to be considered alongside those of their parents. Whereas children who had experience of contested matters, particularly those with experience of abuse or violence, were more likely to want the decision to reflect the child’s views alone. These children were also more likely to say that the age children’s voices should be heard should be lower than other children and were less concerned about the consequence that giving a view may place them in a conflicted position. The authors suggest that children with experience of violence and abuse may be less likely than others to trust one or both of their parents’ views or their capacity to act in the child’s interests.

Marshall et al (2002) offer criticisms about how children’s views are elicited in Scottish family law proceedings. Unlike the Children’s Hearings System, where children’s views are taken into account on a regular basis, the Scottish family law system regards making contact decisions and eliciting children’s views as a single event. This does not recognise that circumstances and views may change over time. Wade and Smart (2002) offer similar criticisms about eliciting children’s views in English proceedings. They suggest that a one-off meeting to ascertain a child’s views

meets the requirements of the legal process rather than the needs of the child. The authors argue that it fails to take account of the crucial roles that building relationships and rapport play in enabling children to talk about their circumstances and views. As the earlier review of case law found, the issue of how often children's views are taken continues to be an issue of concern. Interestingly, both Birnbaum et al (2011) and Cashmore and Parkinson (2008) report that children identify having a trusted person (not a parent) to support them through court processes as being beneficial. Highet and Jamieson (2007) also report different perspectives from children on who they wanted to talk to about parental separation and found that children primarily talked with their mother and in some cases provided support to their mothers.

This section has highlighted findings from key research with children about parental separation and the legal processes that manage contact arrangements. The findings highlight both the importance of children's participation in disputes about contact, as well as some of the complexities that surround it.

3 Domestic abuse

We now turn to the literature on domestic abuse. This part of the review begins by considering what domestic abuse is and how it is conceptualised. It then looks at the evidence that links the issues of separation, child contact and domestic abuse. The discussion then focuses on the impact that domestic abuse has on children. It concludes with a discussion on the existing evidence about children's views about contact with their fathers in this context.

3.1 Conceptualisations of domestic abuse

Across disciplines and jurisdictions a range of terms are used to denote the behaviour that this thesis refers to as domestic abuse. These include but are not limited to: coercive control, intimate partner terrorism, domestic violence, intimate partner violence, woman abuse and family violence. Each term is rooted in particular ideologies that bear influence on how domestic abuse is framed and how it is understood.

The literature reveals are two broad perspectives on domestic abuse: feminist and family violence (Kurz, 1989). Feminist perspectives on domestic abuse emerged in the 1970s. They construct domestic abuse an issue of power and control, with roots in patriarchy and male dominance in heterosexual relationships (Johnson and Leone, 2005). Family violence perspectives on domestic abuse developed from research in the 1970s and 1980s., it focuses on violence in families and amongst couples. It constructs conflict as a basis for violence (e.g. Straus, 1979 and 2005; Gelles 1974; Straus and Smith, 1990). These different perspectives on what domestic abuse is have in part been explained by their reliance on different types of methodology for research. Early feminist research relied on qualitative methods with women living in shelters (refuges), hospitals and agencies, whereas family violence research relied on large-scale general population surveys. As well as using predominantly different methodologies, which has led to these bodies of research focussing on different issues.

Feminist research has had a narrow focus on violence perpetrated by men against women. It reports that this type of violence is rooted in dynamics of power and control; violence can be frequent and is likely to escalate; and violence is carried out almost entirely by men (e.g. Dobash and Dobash, 1980; Stark and Flitcraft, 1996). Theoretically this research has drawn attention to patriarchal familial structures, constructions of masculinity and the social structures that disadvantage women and make it difficult to exit relationships with abusive men (Johnson, 1995). On the other hand, family violence research reports that violence arises from conflict; is less severe and surprisingly frequent; and with no gendered difference amongst perpetration and victimisation (Johnson, 2006). The theoretical focus of family violence research has been on the similarities amongst types of family violence, the role of stress in triggering violence and the norms that allow and sanction violence in the family (Johnson, 1995)

The differences in findings from these bodies of work have led to much argument and controversy between the different perspectives. This has particularly

concentrated on the gender symmetry or asymmetry of violence. Johnson (1995) argues that the divergent findings from these bodies of research can be explained by the simple fact that they study different phenomena. He offers a typology of violence that categorises the different types of violence that the different perspectives study. 'Patriarchal terrorism' is the phenomenon that he argues feminist perspectives have focused on. He describes it as:

'Patriarchal terrorism, a product of patriarchal traditions of men's right to control "their" women, is a form of terroristic control of wives by their husbands that involves the systematic use of not only violence, but economic subordination, threats, isolation, and other control tactics.' (Johnson, 1995: 284)

'Common couple violence' is the phenomenon that Johnson argues family violence scholars have focused on. He describes it as:

'...less product of patriarchy, and more a product of the less gendered causal processes discussed at length by Straus and his colleagues working in the family violence tradition (Straus & Smith, 1990). The dynamic is one in which conflict occasionally gets "out of hand," leading usually to "minor" forms of violence, and more rarely escalating into serious, sometimes even life-threatening, forms of violence.' (Johnson, 1995: 285)

The key difference between Johnson's concepts of patriarchal terrorism and common couple violence is motivation. In patriarchal terrorism, violence is used in an instrumental way. Violence forms part a larger context of behaviour that intends to control. In common couple violence, violence is not used instrumentally. It results from conflict rather than a motivation to control.

In Johnson and Leone (2005), a revision is made to the original categories that developed by Johnson (1995). They move from patriarchal terrorism and common couple violence to intimate terrorism and situational couple violence. The new categories maintain a focus not the nature or frequency of violent acts and on the level of *control* in the relationships where violence occurs. Intimate terrorism is violence that takes place amidst a general pattern of control; situational couple violence does not. Johnson and Leone apply these concepts to data from the US

National Violence Against Women Survey. They report differences in the effects that these types of violence have on victims underlining the differences amongst these types of violence. They report that adult victims of intimate terrorism are attacked more frequently and that violence is on going. Adult victims of intimate terrorism are more likely to be injured and exhibit more symptoms of posttraumatic stress syndrome than victims of situational couple violence. Johnson's work has been key in highlighting the differences that exist in types of violence particularly around the motivation for violence and the impact that it has.

In Stark's (2007) monograph he argues that a 'huge chasm' exists between women's (and I would add children's) experiences of domestic abuse and the current responses to domestic abuse. He proposes that a research focus on incidents of severe violence has meant that other tactics that subjugate and entrap women are largely ignored or trivialised. This has led to service responses adopting a 'calculus of *physical* harm' (my emphasis, p4) to assess how serious domestic abuse is and to guide responses to it. In particular he draws on how the criminal justice system addresses domestic abuse. He argues that current frameworks do not adequately address the whole of domestic abuse. They focus on incidents of violence, neglecting that abuse primarily deprives rights and resources necessary for personhood and citizenship. Stark argues that although physical violence is an essential part of domestic abuse it cannot be seen in apart from other tactics that are used. Physical violence is one tactic that is used to dominate and subjugate. Physical violence is interwoven with intimidation, isolation and control. Stark argues that a reframing of current understandings of domestic abuse is necessary to counter a dominant misunderstanding of what domestic abuse is.

Drawing from his clinical experience, Stark proposes a move towards a typology of abuse that he terms 'coercive control'. He suggests that some similarities exist between coercive control and other 'capture crimes' like kidnap or stalking. He argues that like coercive control, these crimes are on going and involve using a range of tactics that have the ultimate aim of dominating and controlling the victim. Stark argues that coercive control is more complex than violence. Its aims reach beyond

behavioural compliance; they intend to destroy women's autonomy. He reframes domestic abuse from an issue of partner violence to one of a violation of women's rights.

Central to Stark's argument are the connections he makes between private and public life. He cites women's particular vulnerability to coercive control in their personal life as stemming from the subordinate position that women occupy in public life when compared with men. He argues that social norms, which require women to undertake more responsibility domestic life and childcare, provide opportunity for men to control women's lives. Thus there is interplay between women's lack of autonomy in their private lives and their public lives. Stark returns to feminist theories in his proposals for solving the problem of domestic abuse. He advocates a shift from protecting the physical integrity of women, to ensuring their personal freedom. This would restore a feminist emphasis on gender equality and freedom, which Stark considers to be missing from the current violence against women movement.

Stark's (2007) analysis of domestic abuse is not new. As discussed earlier feminist perspectives of domestic abuse at their core have theories of power and control. They have argued that 'non violent control tactics take on a violent meaning that they would not have in the absence of their connection with violence.' (Johnson and Ferraro, 2000). This is demonstrated by the work of Dobash and Dobash (1980) in the extract from an interview carried with a survivor of domestic abuse: "*all he had to do was look at me that way and I would do whatever he wanted*". These ideas are also apparent in the recent work of Pain (2012). Like others she argues that constructing domestic abuse as discrete acts of violence overshadows the fear that domestic abuse engenders. Victims are often fearful of what a perpetrator might do. Their first hand experience of abuse, grounds these fears of what a perpetrator may be capable of. Pain (2012) draws parallels between how fear operates in cases of domestic abuse and other research on trauma. The 'Duluth Power and Control Wheel' now synonymous with training and raising awareness about domestic abuse drew directly from the accounts of women living in shelters to conceptualise how

domestic abuse is a pattern of controlling behaviours. The wheel embodies the idea that violence is but one of many tactics used to coercively control. It explains that the tactics used include: intimidation, emotional abuse, isolation, minimising the abuse, using children, male privilege, economic abuse, coercion and threats, and physical and sexual violence (Pence and Paymar, 1993). Nonetheless a key strength of Stark's (2007) typology is the clarity and refocusing on the idea that physical violence not to be the only factor that determines whether a partners' behaviour is abusive or not. In focusing attention on the dynamics of relationships, Stark's concept of coercive control reinvigorates understandings of what domestic abuse is and how it operates in relationships.

From this discussion a number of key issues emerge as important when examining domestic abuse. Firstly, what domestic abuse is, whom it affects and why it occurs are all contested. Feminist scholars argue that constructing domestic abuse in terms of discrete incidents of violence misrepresents what domestic abuse is. They argue that domestic abuse is an on-going phenomenon where violence may be one of several tactics that are used instrumentally by one partner to control the other. This construction of domestic abuse encourages us to focus on the dynamics of relationships rather than incidents of violence. This perhaps requires us to think differently about how domestic abuse is addressed and evidenced in disputes about contact. Instead of the focus on proving whether particular incidents of abuse or violence have taken place, a more robust analysis of the nature of the parental relationship is necessary. This would of course address violence, but also have a clear focus on levels of fear, control and coercion that exist in the relationship.

3.2 Contact and domestic abuse

This part of the review now examines research on why contact can be problematic in the context of domestic abuse. In reviewing this literature, three issues emerge as important. The first is that domestic abuse does not necessarily end when parents separate. The second is that domestic abuse has detrimental impacts on children. The third relates to the quality of parenting by men who perpetrate domestic abuse.

3.2.1 The ending of the relationship does not necessarily equate with the ending of abuse

It is often assumed that women should end their relationship with the perpetrator of domestic abuse, in order to end the abuse and ensure the safety of their children. Whilst research shows that separation is the best way for women and children to ‘escape’ from domestic abuse (Walby and Allen, 2004). Jaffe et al (2003: 29) argue that “separation is not a vaccination” against domestic abuse. This is supported with findings that abuse continues and often increases during separation, as the abusive partner attempts to reassert his control (Brownridge, 2006; Brownridge et al, 2008; Jaffe et al, 2008). An English study about police notifications to children’s social care following a police call out to an incident of domestic violence, found that in fifty four per cent of all cases the couple had separated (Stanley et al, 2011). Therefore highlighting the importance of recognising that domestic abuse may continue following separation

The time immediately following separation has been reported as being one of particular risk for women. Richards’ (2003) review of domestic violence murders reported to the Metropolitan Police casts light on this issue. The analysis is based on 30 out of 56 murders that took place over a 15month period. The report reveals that 76% of the murders (16 of 21³⁴) took place following first two months of separation. Richards reports that children were resident at the home address in 13 (43%) of the murders, that 30% of the children witnessed the murder and that many of the murders happened alongside on-going disputes about children’s contact and residence. This demonstrates the connections between domestic abuse, the escalation of risk and separation. Hotton’s (2001) review of Canadian data from the 1999 General Social Survey indicates that about half of intimate femicides (49% or 73 of 169) by ex-partners occur within two months of separation. Hotton further reports that 32% occurred after two to twelve months following separation and the remaining 19% occurred more than a year following separation

³⁴ 21 relates to the number of cases that had involved intimate relationships.

As well as the issue of time, the presence of a new partner has been identified as a risk factor for post-separation violence. For instance, in Hotton's (2001) analysis she reports that in 41% of homicides, investigating officers cited fear of infidelity as motivation for murder. However this issue does not seem to be clear-cut. For instance, Fleury et al's (2000) longitudinal study with 278 women recruited from refuges in the US found that women who had a new partner reduced were less likely to be assaulted by their ex-partner and suggested that for some women it might be a protective factor.

Brownridge (2006) suggests that the presence of children is an important consideration for post-separation violence. In his review of divorce literature he argues that the majority of research suggests that the presence of children are in fact a risk factor for continued violence and abuse. He draws on US research about post-separation violence and connections with custody (e.g. Hardesty, 2002; Kurz, 1996) child support (e.g. McMurray, 1997) and access (e.g. Fleury et al, 2000; Hardesty, 2002) to support these ideas. Brownridge also reports on the most common motives for post-separation violence, which include retaliation (e.g. McMurray, 1997), to restore power and control (Arendell, 1995) and perhaps reconciliation (e.g. Hardesty, 2002).

Several UK studies have also identified contact (access) as a site for post-separation violence (e.g. Radford and Hester, 2006; Howarth et al, 2009; Thiara and Gill 2012; Aris et al, 2002). Radford et al, (1997) reported that the majority of the 53 women who took part in their English study described being abused in the context of contact and that their children had witnessed this. In their evaluation of English Independent Domestic Violence Advisors over a 27-month period, Howarth et al (2009) report on the risks related to 3,600 children whose mothers' were involved with the service. The evaluation reports that conflict around contact was found in 41% cases, the mother was afraid of harm posed to the child in 27% of cases and the perpetrator had threatened to kill children in 11% of cases (p40). Humphreys and Thiara's (2003) quantitative study of women who had separated from a violent partner also underlines the importance of considering the links between contact and post

separation abuse. They found that 76 per cent of the 161 of women experienced post-separation violence. Of the 49 per cent of women whose children had contact arrangements with an abusive ex-partner, only 4 per cent reported no issues relating to post-separation violence. The study revealed that the first six months following separation were most dangerous. For a small group the abuse stopped over time. Other women stopped contact to prevent abuse, but for over a quarter (27 per cent) there were chronic problems with post-separation violence and child contact arrangements. Thiara and Gill's (2012) UK research about South Asian and African Caribbean women and children's experiences of contact and domestic violence found that post-separation violence was a significant issue for 78 per cent of the 45 women who participated in the study. They report that threats of child abduction were used by their ex-partners as a particular tactic of abuse. Their research also highlighted that both South Asian and African Caribbean women were likely to under-report domestic violence or seek help from professionals for different reasons.

This all underlines that the ending of a relationship does not signal the ending of domestic abuse. It evidences that separation may in fact increase the risk of domestic abuse. It may escalate and in a minority of cases women are killed by their ex-partners following separation. The presence of children increases women's risk for post-separation abuse. Research has shown that contact may provide a particular focus for post-separation abuse to occur. These findings become more potent when considered alongside earlier evidence on contact and the outcomes it has for children. Particularly relevant to this research are the findings that contact may present opportunities for children to be exposed to parental conflict which has been highlighted as having detrimental effects on children earlier in this chapter (e.g. Grych, 2005; McIntosh and Chisholm, 2008).

3.2.2 Children's exposure to domestic abuse

McGee (1997) and Holden (2003) both provide taxonomies that describe how children are affected by domestic abuse. Stanley (2011: 29) comments on the limitations of each of these but suggests that they are potentially useful when considering the extent of children's exposure of domestic abuse. Taken together they

suggest the following dimensions as important when considering children's exposure: prenatal exposure; the various ways children witness abuse both directly and indirectly (for instance being physically present or overhearing abuse); children's exposure to the aftermath of abuse (for instance injury or parental separation) and children's participation in abuse. This section discusses some of the key research on children's exposure to domestic abuse.

Children whose mothers experience domestic abuse are rarely protected from the knowledge that domestic abuse is occurring. However, the extent of children's witnessing domestic abuse varies across studies. Stanley et al's (2010) study on social work responses to domestic violence in two English authorities over a 21month period casts light on this. They report that of 184 notifications made by the police to children's social care services as result of domestic violence, children were recorded were by the police as directly witnessing the incident in 45% of the cases. McCloskey et al's (1995) research with 365 mothers and 1 of their children found that nearly half of the child respondents had witnessed their fathers choking their mothers. Abrahams (1994) interviews with 102 mothers, found that 86 per cent of children were reported by their mothers as being either in the same or adjoining room during an incident of domestic abuse. It also revealed that 73 per cent of the children and young people had witnessed their mothers being violently assaulted, and that 10 per cent of the children and young people had witnessed sexual violence

A number of studies have suggested that witnessing violence towards their mother constitutes emotional or psychological abuse of children (e.g. Jaffe et al 1990; McGee, 2000). This is supported by research showing that children living with domestic abuse exhibit higher rates of depression and anxiety (McClosky et al, 1995) and are more likely to exhibit symptoms associated with trauma (Graham-Bermann and Levendosky, 1998) than the general population. However, the evidence on the links between domestic abuse and outcomes for children is inconclusive. There is conflicting evidence about whether the effects on boys and girls are different (e.g. Evans et al, 2008; Wolfe et al, 2003) or whether age can ameliorate or worsen the impact on children (e.g. Wolfe et al 2003). Uncertainty about the impact of domestic

abuse on children is further compounded when we consider Kitzmann et al's (2003) meta-analysis of research, which reported that a third of children exposed to domestic violence do not appear to do any worse than other children.

Studies have shown a correlation between domestic abuse and direct abuse of children. Edleson's (1999) meta-analysis of 31 American studies found that in 32-53 per cent of families where women were assaulted by their partners, the perpetrators also directly abused the children. The idea that domestic abuse can be a risk indicator for child abuse is reinforced by Goddard and Hiller's (1993) study. In their review of 206 child abuse cases presented at a child protection unit of an Australian hospital, they found that domestic abuse was prevalent in 55 per cent of cases of child physical abuse and 40 per cent of child sexual abuse.

Research shows that children and young people experience severe disruptions to their lives as a result of domestic abuse. Stafford et al's (2007) Scottish qualitative study with 30 children reports cases where children have had to move home up to eight times during a period of two years to flee from the perpetrator. These repeated upheavals to children and young people's lives are characterised by disruptions to their education, loss of friends, family members and possessions. Children exposed to domestic abuse often report resentment about missing out on their childhood. They give examples where they have had to look after or protect younger siblings, where they were compelled to keep domestic abuse a secret, where they lived with constant fear and intimidation, and where they have felt responsible for ending the violence (e.g. Abrahams, 1994 and Mullender et al 2002). However, research also shows that children are not passive in domestic abuse. For instance, Mullender et al (2002) emphasise the role children have in protecting their mothers and siblings from abuse.

Domestic abuse has also been found to compromise the parenting of both parents. Holden (2003) argues that maternal stress and depression which occur as a result of domestic abuse can negatively impact women's parenting ability. Mullender et al (2002) found that domestic abuse negatively affected women's ability to parent.

Women described exhaustion as a result of anxiety and violent attacks, and parenting strategies that were orientated around minimising the severity of domestic abuse rather than what they thought was good or important for their children. The negative impact on parenting is supported by other earlier studies that found that mothers who had experienced domestic abuse had a poorer mental health status which adversely affected their ability to parent their children (e.g. Strauss and Geles, 1990; Holden and Ritchie, 1991).

Some authors view domestic abuse as a specific attack on the mother-child relationship. As well as evidence that women are verbally, physically and sexually abused in front of their children, Mullender et al (2002) report incidents where the perpetrator forced the child to abuse his or her mother. Children report anger towards their mother for failing to protect them or for staying with the perpetrator. In some cases they blame their mother for being the cause of the abuse. However Edleson (1999) warns that an over-reliance on the research that examines mother-child relationship may mean that the deficiencies of mothers are highlighted rather than the abusive dynamics that cause them.

Fathers have been somewhat neglected in the literature on domestic abuse. Men have been addressed in research about perpetrators of abuse but there is a lack of research about abusive men as fathers. A number of authors have highlighted this gap and have called for further research on this area. (e.g. Featherstone and Peckover, 2007; Guille, 2004; Peled, 2000; Sullivan et al, 2000). Using perpetrator research to examine fathering has limitations as perpetrator programmes tend to be dominated by men from lower socioeconomic backgrounds and by those who have been mandated by court to attend. Nonetheless, this research provides an important although limited insight into abusive men's attitudes towards their children.

Research with men who are engaged with perpetrator programmes examines their ability to accept responsibility for their abuse towards women. It finds that men are often unable to identify or empathise with the women that they have abused. In contrast men often report being able to identify and empathise with their children.

This connection between men and their children is often exploited in the curriculum of perpetrator programmes. For instance the impact of domestic abuse on children is a key area that perpetrator programmes use to encourage change in men's behaviour. Stanley et al (2012) found that during perpetrator programmes, the impact abuse has on children was the issue to be most likely to prompt men to express a desire to change their behaviour. This idea is repeated in the Welsh evaluation of *Caring Dads*³⁵ (McCracken and Deave, 2012). This small-scale evaluation reported that fathers identified an awareness of the impact of their abuse on their children as the most important driver for change in their behaviour. However, like the other research discussed, the study also found that a number of the men who participated in the programme did not accept responsibility for their behaviour or aggression towards women.

While men may identify children as pivotal in their desire to 'change', research reports that men are often reluctant to recognize or accept the impact that their abuse has had on their children (Salisbury et al, 2009). Some studies show differences between concern about the impact of the abuse on children amongst biological fathers and stepfathers (e.g. Fox et al, 2001 and Rothman et al, 2007). Rothman et al's survey of perpetrators perceptions and attitudes towards children's exposure of abuse found that biological fathers reported greater concern and remorse than stepfathers. However, Rothman et al reported a disconnect between biological fathers professed concern about the impact of abuse and their intentions to change their behaviour. They conclude that this has important implications for post-separation parenting arrangements; although fathers may regret their children's exposure to abuse, this alone does not predict that they will stop being abusive. Holt's (2013) Irish study about contact and domestic abuse revealed similar findings. As part of a larger study, she interviewed six fathers engaged with perpetrator programmes. Holt reports that while fathers' accounts demonstrated insight into how their behaviour had

³⁵ Caring Dads originated in Canada and been replicated in other parts of the UK. While not a perpetrator programme, it uses similar techniques to these in order to improve abusive men's parenting capabilities.

affected their children, this was not always accompanied by a willingness or recognition that they needed to alter their behaviour.

Harne's (2004) English qualitative study with fathers who attended perpetrator programmes is one of the few that addresses abusive fathers' parenting. She reports on abusive fathers' accounts of their own parenting. This included fathers' perceptions that their children were responsible for the abuse they carried out. In 'The Batterer as a Parent', Bancroft and Silverman (2002) reflect on their own clinical practice and research to examine the attitudes and behaviour that shape abusive fathers' parenting. They describe abusive fathers as having an authoritarian parenting styles, an inability to prioritise the needs of their children over their own, as well as a tendency to manipulate their children.

This section highlights key findings from research on children's exposure to domestic abuse. It has demonstrated how children are exposed to domestic abuse, has highlighted the overlap between domestic abuse and child abuse, and has discussed the contradictory evidence about the impact domestic abuse has for children. Findings on the impact domestic abuse has on parenting, especially fathering, are particularly relevant given the earlier discussion about the quality of parenting being an important predictor for whether contact is positive for children or not.

4 Children's perspectives on contact with fathers when there is domestic abuse

Although this area is under-researched, six key studies offer important insights: Aris et al (2002); Peled (1998); Mullender et al (2002); Eriksson and Näsman (2008); Thiara and Gill (2012); and most recently Holt (2013). All of the studies report children's views on domestic abuse, each examining a different aspect of child contact.

Aris et al (2002) explored experiences of contact centres where there was history of domestic abuse. Using questionnaires they surveyed 18 children aged between 5 and

13 years who were accessing contact centres³⁶. The constraints of the methodology mean that the study presents a somewhat limited insight into children's views about contact. The authors report that the majority of children (around three quarters) said it was good to see their father. However, some children qualified this response, with the authors suggesting that this qualification related to children's anxieties about contact. Children in the study reported a range of factors that would improve contact. For some contact, would be better if it was more frequent, while for others it would be better if contact were stopped.

Peled (1998) reports on children's perceptions of their abusive fathers from a qualitative study with 14 pre-adolescents in Israel. She writes about children's ambivalence surrounding their fathers in more depth than other studies have.. Findings reveal that very few of the children she studied were able to accommodate the conflicting sides of their fathers. Peled's analysis shows that children may choose between seeing their fathers as 'bad' and abusive, or reframe and downplay his abuse. Most of the children interviewed identified as loving their father and made a point of emphasising his positive qualities.³⁷ Peled argues that the context in which domestic violence occurs influences children's construction of their fathers. She comments that police, shelters and domestic violence programmes, which children may come into contact with as a result of their father's actions, expose to children a conflict between their views of what domestic violence is and how others view it. She comments that children may construct domestic violence was a fight amongst parents and rather than adopting an analysis that constructs it as abuse.

Although they do not ask directly about fathers, Mullender et al (2002) provide evidence on children's feelings towards their fathers. This is the largest study of the five, it involved a school-based survey of 1395 children and 54 in-depth interviews

³⁶ This was part of a larger study that also surveyed mothers, fathers and contact centre staff.

³⁷ Similar findings are reported by Hightet and Jamieson (2007) in their study about young people and family change. Although not directly about domestic abuse, they reported that in their sample children who were affected by domestic abuse found it particularly difficult to reconcile their fathers abuse with the ideal of a father.

with children aged 8-13 years with experience of domestic abuse. Drawing from the interview data, Mullender et al (2002: 187-205) provide a different perspective to the conflicting feelings that children have about fathers. They found children held complex and contradictory emotions towards their fathers, including sadness, love, anger and fear. In the long term, children's feelings towards their fathers were determined by their fathers' behaviour and whether they were able to 'change'. Unsurprisingly, whether children wanted a continued relationship with their father depended on their feelings towards him. Those who described hating or feeling scared of their father did not want contact. For other children the relationship between their feelings and desire to have contact was more complex. They described feeling relieved that they no longer lived with their father, that they disliked their father but did not want to 'lose touch'. Children also reported that contact was used by fathers to be abusive or aggressive towards mothers and children.

Both Peled and Mullender's findings highlight the complexity of children's feelings towards their father and how these may be linked to their analysis of his behaviour and his capacity to change. This underlines how important it is to grasp the context in which children's views about contact are expressed. The findings suggest that it cannot be assumed that children's views about contact when there is domestic abuse are homogenous. Nor can it be assumed that children's views towards contact will be articulated as being entirely negative or positive, or that children will have the same analysis of domestic abuse as their mothers, fathers or professionals. This presents particular dilemmas when we consider the findings from *Chapter two's* review of case law about which views that are given weight in court. If views that are consistent and clear are favoured over those that are ambivalent and anxious, what does this mean for those children who struggle to accommodate the conflicting sides of their father?

Thiara and Gill (2012) undertook research with South Asian and African-Caribbean women and children in England about child contact in the context of domestic violence. As part of the research, they interviewed 45 women and 19 children aged between six and sixteen years. The research findings predominately derive from the

accounts of women. However there are some findings generated by data from children that provides insights into children's perspectives on contact.

Like others, Thiara and Gill (2012: 74-77) also report on the variation of children's views and feelings about contact. While some children described being happy about contact, others had mixed feelings. They highlight how men used contact with children to encourage women to reconcile with them. Connections here can be made with *Chapter Two's* findings that key to the court's weighing of best interests is its determination of the on-resident parent's commitment, motivation, and attachment of the child. It might be argued that the court would not view motives for contact that are rooted in reconciliation as those that are in a child's interests. Thiara and Gill also describe how children constructed their fathers post separation abuse as evidence that their fathers' loved them and wanted the family to be reunited.

The research of Peled, Mullender et al, Thiara and Gill all highlight how fundamental children's emotions, and their analysis of the domestic abuse and the separation that has occurred in their families, are to views about contact. Children may struggle to cope with the losses that parental separation represents and may well view contact as a means to ameliorate these. This poses particular questions about how well current legal mechanisms that support children's participation in legal disputes accommodate this. How able are they to fully appreciate and explore the feelings and analysis that underpin children's views about contact?

Thiara and Gill's research adds a further layer to the complex emotions children navigate when discussing contact. They highlight that children may feel divided loyalties between their parents and therefore struggle to express a view about contact. This presents an interesting contrast to the earlier discussion where it was found that children with experience of abuse or violence, were more likely to want greater influence on decisions about contact and residence than others (e.g. Cashmore and Parkinson, 2008; Neale, 2002). Thiara and Gill's study discusses how children's sense of divided loyalties were exacerbated by emotional pressure put on some children by their grandparents. This suggests that through participation in contact decisions children may not only be vulnerable to parental influence but also

to influence from their wider family. Thiara and Gill argue that much of the positivity children had about contact related to the opportunity it provided children to play with cousins and friends, rather than the time spent with their father. This highlights how children's wider familial relationships also may affect the views children have about contact. The authors also posit that children in the study did not fully understand the risk that their father posed to their mother. These findings all map onto the debates and dilemmas about children's participation in legal disputes explored in *Chapter two*. These ideas that involving children in disputes about contact may overburden them, leave them vulnerable to adult manipulation or that children are not competent to form views are especially relevant to the subsequent findings chapters.

Eriksson and Näsman (2008) interviewed 17 children aged 7 years and older (15 were interviewed and 2 completed a written questionnaire). Their Swedish study focussed on children's views of family law investigators. Eriksson and Näsman provides criticisms similar to those by Marshall et al (2002) and Wade and Smart (2002) about how children's views are taken in family law proceedings. The study provides examples of legal mechanisms that meet the needs of the legal system rather than the needs of the child. For instance, they describe how two of the children they interviewed had to meet with the family court investigator in the presence of both parents and have that meeting filmed in order to give their views about contact and residence. This meant that children's views about contact were not confidential and had to be articulated in the presence of both their parents. All of which were identified by children to act as a barrier to their participation. The study also provides examples of how parents' interests may be prioritised over those of children, as well as how children's fears about their fathers' may be ignored, dismissed or marginalised in legal proceedings. Again similarities can be drawn from earlier discussions in *Chapter Two*. In particular, connections may be made with the arguments that the indeterminate nature of a child's best interests may lead to a 'pro-contact' bias. This in turn may create circumstances where children's views against contact are set aside by adults, and contribute to domestic abuse being hidden or not squarely addressed.

The final study to consider is Holt's (2013) Irish mixed methods study, as part of which she interviewed 16 children and young people aged between 7 and 24 years of age about their experiences of contact and domestic abuse. Data from children and young people was collected through a mix of focus groups, individual and sibling group interviews. Like Peled (1998), Mullender et al (2002) and Thiara and Gill (2012), Holt reports on the conflicting feelings that children may have about contact. She also discusses how children constructed contact arrangements as reflections of their father's need for control rather than meeting the needs of the child. This adds depth to understanding how children's perceive their fathers' motivations for contact, as well as fitting with research with women about contact (e.g. Ardnell, 1995 and Hardesty, 2002). Holt provides an example where Rachel (aged 11) had to phone her father at set times but outwith these set times, 'He never ever rings us, never ever. Sometimes when he is in a mood he won't even be bothered talking to us.' This illuminates how from the child's perspective, fathers may use contact to exert control rather than to maintain a relationship with them. Holt also reports children's perception that fathers were not particularly interested in them, which led to children's apathy and frustration about contact. Like the earlier evidence on the importance of the quality of the child-non-resident parent relationship (e.g. Kelly, 2003; Dunn, 2005; Weir and Sturge, 2006; Gilmore, 2006), Holt found children to identify the quality of the father-child relations as most influential to their contact experience. It is striking that all of the examples that Holt presents about these issues suggest that children did not find contact, nor their relationship with their father to be positive.

5 Limitations of the existing literature

The studies discussed provide interesting insights to children's perspectives on different aspects of contact where there is history of domestic abuse. However they do not represent a full understanding of children's views and perspectives on this topic. There are a number of important gaps in the existing literature that this research aims to address.

To date has been no research in Scotland about children's views of contact when there is domestic abuse. This is an important gap considering Scotland's unique legal system, which is considered to be the most progressive in the UK with regard to children's participation. The earlier critiques (e.g. Marshall et al 2002, Neale et al, 2002) about whether mechanisms used for eliciting children's views meet the needs of the legal system or the needs of the child are particularly important, given the sensitivity of both parental separation and domestic abuse. Certainly findings from *Chapter Two* about the contested and complex nature of children's participation, as well as Eriksson and Näsman's (2008) criticisms of the Swedish system, highlight that this may be an area of particular concern for children. Cogent arguments for a Scottish focus for research can also be made in light of the recent legislative changes surrounding domestic abuse and parental co-operation.

There are limitations surrounding the scope of existing research. Thus far it has tended to focus on the complex and contradictory feelings that children have about their fathers. Although some research has begun to address children's perspectives about fathers' motivation for contact (e.g. Mullender, 2002 and Holt, 2013), more in-depth research is required to fully examine whether there are other factors that influence children's views about contact when there is domestic abuse. This is especially important given the findings discussed earlier that children often consider the interests of others (i.e. their parents) when forming views about contact (e.g. Cashmore and Parkinson, 2008). What consideration do children give to mothers, in light of the research link between the wellbeing of the resident parent and children's contact outcomes? How well does this fit with the legal concept best interests, which prioritises the child's interests above the interests of their parents? Also missing from the existing research has been attention to the broader circumstances surrounding parental separation and how this may influence children's views about contact. How the well-evidenced link between homelessness and domestic abuse affects children's views may also be a particularly important area.

So far there has been little consideration of the consequences separation and contact may have for children's broader relationships. While Thiara and Gill (2012) address children's relationships with their extended family to an extent, children's broader relationships are an area that has mostly been neglected in the literature, particularly relationships amongst siblings. This is especially important given the earlier evidence on the importance of siblings in protecting children from the negative consequences of divorce and separation.

The final gap in the existing research relates to the notion of parental co-operation and the influence it has on children's experiences of contact. While the broader research on child contact addresses this, it is not adequately addressed in the domestic abuse literature. So far, the domestic abuse literature has tended to focus on the risk and evidence of further abuse taking place during contact. While this is undoubtedly important, it has not considered how the relational consequences of domestic abuse may affect children's experiences of contact. This is an important gap given the emerging evidence on the impact of enduring parental conflict on children (e.g. Grych, 2005, Trinder et al, 2008 and McIntosh and Cashmore, 2008), as well as Stark's (2007) concern that a focus on the incidents of physical violence obscures what domestic abuse is and the impact it has on the lives of women and, I would argue, of children.

The limitations of the current evidence on children's perspectives of domestic abuse suggest further research should consider the issue more broadly. Future research should not only investigate children's views about fathers, the analysis they use to understand domestic abuse, but also consider more deeply the context in which children's views are articulated. There is a need to explore if and what other factors children consider when forming their views. Such exploration should pay particular attention to both children's broader relationships but also the consequences domestic abuse and contact with fathers have for these relationships.

6 Conclusion

This chapter has provided an overview of research on child contact and on children and domestic abuse. The discussion on the evidence about contact and outcomes for children provided a nuanced picture of when contact may be in children's best interests and when it may not. The research on children's perspectives on parental separation and contact highlighted the importance of children's participation as well as the complexities that stem from it. The chapter reported on evidence that domestic abuse may continue following separation and that the presence of children is a risk factor for continued abuse. This was apparent when the evidence that contact may be an outlet for domestic abuse was considered. These findings are especially important considering the evidence earlier in this chapter about the negative consequences that contact has for children if it exposes children to parental conflict. However the research on the children and domestic abuse was less conclusive. While it is clear that children are exposed to domestic abuse, evidence on the impact this has on children is less resolute.

The final part of this chapter looked specifically at children's views on abusive fathers and of having contact with them. It provided some insight into the feelings that children had about their fathers and their attitudes towards contact them. As is proposed for this research, it would be useful to examine how children experience the whole gamut of contact, rather than focussing on a discrete aspects or events. For instance examining together children's views and experiences of contact, how decisions about contact are made and children's involvement in decisions.

Research Methodology

1 Introduction

This chapter outlines the research methodology used to examine children's experiences of contact with non-resident fathers when there is domestic abuse. The research involved separate in-depth interviews with eighteen children aged between 8 and 14 years and sixteen mothers. It begins by defining the aim of the research, locating the research within an epistemological position and by re-stating the research questions. It then provides an overview of the research strategy adopted for the study along with an account of the research instruments used for data collection. This includes a discussion on the rationale for selecting these. The chapter discusses the ethical issues that informed the research design and provides examples of ethical dilemmas that arose during the research process. The final part of the chapter pays attention to the analytical strategy that was used for the study. This explains how the analysis was carried out.

2 Research aim and questions

The purpose of this study was to examine children's experiences of contact with non-resident fathers when there is domestic abuse. As previous chapters have highlighted, while contact in circumstances of domestic abuse is increasingly on the policy and research agenda, children's own perspectives on this is an area that has been under-researched. This has led to the general absence of children's views and perspectives from policy debates about contact in these circumstances. This study aimed to go some way in addressing this gap in research by exploring with children their own experiences and views about contact in the context of domestic abuse.

The study's research questions were formulated after an initial review of key areas of literature. These were: child and family law and on domestic abuse. The research questions were shaped by the limitations of the existing research that were outlined in *Chapter 3*. This meant that the research set out to explore the issue of contact

when there is domestic abuse more broadly than other studies have. It aimed to understand the range of issues that may influence children's views about contact, the context in which children's views are articulated and how the relational consequences of domestic abuse might affect children's experiences of contact.

The research questions for the study are:

- What influences children's views about contact with non-resident fathers?
- What perspectives do children have on participating in parental disputes about contact?
- How do children experience contact in a context of domestic abuse?
- In what ways are children exposed to domestic abuse before and following separation?

The last research question: '*In what ways are children exposed to domestic abuse before separation?*' had not been amongst the original questions set for the research. It emerged following data collection and during the data analysis. It was at this point that the salience of children's exposure to domestic abuse pre and post separation became obvious. In retrospect, the absence of a research question about children's exposure to domestic abuse may appear naïve. However, it reflected a desire not to presuppose the influence that domestic abuse had on children's contact experiences. At the time this had seemed important given how charged the issue of child contact in circumstances of domestic abuse had become and continues to be.

3 Starting point for the research

The research adopted an interpretivist epistemological stance (Snape and Spencer, 2006: 13-15). Walliman (2011: 21-25) argues that interpretivism accommodates different constructions and understandings of the world that different people have. Interpretivism comes from the perspective that rather than there being one reality, there are multiple socially constructed realities. Interpretivist research, therefore, sets out to reveal how and what different interpretations people make of their social worlds. Guba and Lincoln (1994: 100) comment that this type of research is

committed to studying the world from the point of view of the 'interacting individual'. At its core, interpretivism is concerned with '*contextualised meaning*' and is '*unabashedly and unapologetically subjective*' (Greene, 1994: 536). Greene (ibid) further argues, that an interpretivist paradigm locates people's lived experiences, and people's interpretations and meanings of these, as appropriate and legitimate areas for enquiry. The research followed these ideas with its focus on children's experiences and perspectives of contact. As highlighted in the literature review, children's perspectives have been somewhat neglected. An interpretive approach opened the research to develop a deeper understanding of the breadth of children's experiences of contact. The methods discussed in this chapter were designed to elicit and uncover the meaning and understanding children attributed to parental separation, participation in decisions about contact and children's post-separation relationships with fathers. Such an approach aimed to contextualise children's views about contact, not simply enquire whether or not children desired contact with their father. During analysis, attempts were made to ensure that children's experiences were contextualised, for instance where children and mothers perspectives are compared and contrasted. This is discussed later in this chapter and the results are reported in the findings chapters.

Another hallmark of interpretative research is that it understands the researcher to be part of the research process, not an impartial or distant observer (Walliman, 2011:25). Angrosino (2005: 734) notes that a critique of researchers' roles has developed 'in response to a greater consciousness of situational identities and to the perception of relative power'. He argues that postmodernism emphasises understanding the researcher's context as part of the interpretation of research. Researchers increasingly 'declare' their connections to the issues and people that they study. The following section establishes the context of the research and makes explicit my connections to the topic.

3.1 Understanding domestic abuse

The earlier chapters have already outlined the different names for and theories about domestic abuse. This study adopted a gendered analysis of domestic abuse. It

recognises that victims of domestic abuse are disproportionally women and children, and that perpetrators predominantly are men (Scottish Government, 2010; Johnson, 2008; Stark, 2007). That is not to say domestic abuse does not affect men, people in same sex relationships or transgender communities but it recognises that women and children are predominately the victims. It also recognises that the impact of abuse is different for women and men. Hester (2009) reports that women are more likely to experience greater levels of fear than men and abuse perpetrated by men has greater intensity and severity than abuse perpetrated by women. The impact of abuse on women is compounded by social factors that mean, in general, women have fewer resources to exit abusive relationships than men (Johnson, 2008). The study understands domestic abuse to encompass a broad range of physical, emotional and sexual behaviours that are used tactically by men to dominate and control their female partner (Stark, 2007). Children can be part of this abuse as witnesses and as direct victims (Mullender, 2002).

3.2 Occupying an insider role

Before the research began I worked at Scottish Women's Aid as a children's policy worker. This organisation lobbies and campaigns for improved policy and service responses to domestic abuse. My role focussed on developing services for children and supporting children's participation in policy and research. Scottish Women's Aid has been and continues to be active working in the area of child contact; this includes supporting this research. While not a true 'insider' - I am not a child who has experience of contact in the context of domestic abuse - my prior work experience has meant that I have occupied a quasi 'insider' role. I believe that this has been both beneficial and challenging to the research.

It was my insider role that led me to realise the topic was under researched and to develop the proposal for the research. It also meant I was perceived to be credible by those working in field and perhaps by research participants. Coming from Scottish Women's Aid, I was thought of as having a good grasp of the issues surrounding contact and domestic abuse and perceived to be 'for' the research participants. This

has meant that issues like access were easier to negotiate than might have been otherwise.

Dwyer and Buckle (2009: 58) report as an insider there can be an assumption that ‘you are one of us and it is us versus them (those on the outside that don’t understand)’. This, of itself, can be problematic. What happens when the researcher digresses from the ‘insider’ way of thinking? Might the researcher only be open to hearing what confirms what s/he already know? These are issues that I have grappled with during the research. I was concerned that the research would be perceived as being not neutral and seeking to support a particular viewpoint. An obvious tension has been Scottish Women’s Aid’s strong position on child contact when there is domestic abuse. During the passage of the Family Law (Scotland) Act 2006 they sought a change in law that would lead to a rebuttable presumption against contact when there is domestic abuse unless it could be proven to be safe.

It would be naïve to assert that working in this organisation has had no influence on the research. However, as Rose (1985: 77) comments, the ideas of objectivity and neutrality may be misleading:

‘There is no neutrality. There is only greater or less awareness of one’s biases. And if you do not appreciate the force of what you’re leaving out, you are not fully in command of what you’re doing’

Throughout the research I have tried to remain aware of the biases that I have and taken steps to reflect upon the influence they have on the research. As discussed earlier the research question ‘*In what ways are children exposed to domestic abuse before and following separation?*’ came from the data and had not originally been a question for the research. The importance of the nature of domestic abuse and children’s exposure to it emerged during data collection and at the analysis stage.

During the analysis I tried to be alert to my biases and to think about these critically when analysing the data. I presented my research to audiences that were not necessarily orientated to ideas about domestic abuse to seek other views on my data.

I also used supervision to help challenge me to think critically about the analysis of my data. I purposely did not spend time at Scottish Women's Aid once fieldwork began. I wanted to be somewhat removed from the organisation and its work. This meant I felt less constrained by the ideological position of the organisation. The organisation has also been distant from the research; it has not made any attempts to influence or shape the findings. I do not wish to construct the influence of Scottish Women's Aid as negative. It inspired my interest in the research area and provided grounding to it. Furthermore, another researcher who did not occupy an 'insider' role would not have been without bias; rather it is likely that they would simply have brought a different set of biases.

4 Research design

The study used a qualitative research design. A qualitative design was most appropriate for the research questions as it allows for an in-depth examination and understanding of experiences and views (Bryman, 2012: 470). Qualitative research is suited to exploring issues that are complex and events that unfold and change over time (Ritchie, 2006). This made a qualitative approach particularly appealing for this study. The relationships children have with their fathers in the context of domestic abuse are complex. As highlighted in the review of literature, children may feel angry towards their father, feel protective towards their mother or feel sorry for their father and miss him if they no longer live with him. The process of parental separation and subsequent attempts to make decisions about contact are also complex. There may have been more than one separation and children may have been involved with many different legal events relating to disputes about contact and perhaps had some involvement in criminal proceedings as witnesses. Using a qualitative research design allowed for a detailed examination of children's perspectives and produced rich and extensive data. Finally, qualitative approach data collection methods are flexible, allowing new and emerging issues to be explored (Ritchie, 2006: 32). This was important, as the research area was new. During the study this flexibility proved to be fruitful when interviews revealed that a number of children had been separated from their siblings as a result of their parents' separation. This was something that was important for children and influenced their

feelings of and attitudes towards contact. When starting the study, this was not an issue I had thought would be significant. However, the flexibility of qualitative research meant that this issue was able to emerge and be explored with children.

A criticism of qualitative research is that findings cannot be generalised from or applied to a different setting (Bryman, 2012: 406). This research does not intend to draw conclusions about *all* children's experiences of contact when there is domestic abuse. It aims to add depth to how we understand children can experience contact in this context. This is important, as it is an area that is under researched. Findings from this study can be compared with others and form a basis for other types of research.

4.1 Whose perspective matters?

As noted in the review of legislation, disputes about contact are framed as parental disputes. While the issue of contact is concerned with children and their interests, it is parents who are traditionally seen as the parties that are involved. The primary role that parents have in contact disputes raises questions about who data should be collected from. In this study both children and mothers were interviewed. Interviews with women were seen as a means to establish the legal context about contact and to provide women opportunities to provide other information that children might not be aware of. Fathers were not interviewed out of concern that it would undermine children and women's safety. I was also concerned that it would negatively affect children's ability to participate in the research. A discussion on this and the rationale for this decision follows.

During the initial stages of the study I was keen to develop what could be described as a 'purist child centred' approach. I wanted to focus exclusively on children's perspectives on contact and was therefore reluctant to involve any adults in the study at all. This stemmed from a commitment to constructions of children as 'experts in their own lives', 'social actors with agency' and 'whose lives are worthy of study' all of which have been core to the discipline of childhood studies (e.g. James, et al, 1998). This seemed particularly important as research had already been undertaken with women about contact that had reported on children's experiences but in the

main this has relied on adults' accounts about children (as discussed in *Chapter Three*). While these are undoubtedly illuminating, they do not reveal children's *own* views of contact. The emphasis on ascertaining children's views and according them due weight by Scots law meant that this gap was important. A decision to include adults in the study risked replicating criticisms of the welfare paradigm that are discussed in chapter two. It risked constructing children 'as lacking the capacity and maturity to understand and assert their own needs' (Hunter, 2007). Moreover, including adults had the potential to dilute or distract from children's own perspectives. This was particularly pressing given that the earlier literature review found that a barrier to children's participation in disputes about contact was that children were often concerned that their parents might discover the views they have expressed.

However, the literature on children and family law also indicates that data generated exclusively from children might not fully address the research questions. Repeated findings that children are often unaware and, or, confused by legal proceedings that pertain to parental disputes about contact. This means that children's insights into their participation in the legal proceedings they were involved with may be limited (e.g. Tisdall et al, 2002). Important findings in themselves, they also raise questions about from whom data for the study should be collected.

Further questions were also raised after consideration was given to existing research on domestic abuse and children. It highlights the importance of promoting and, at the very least, not undermining the relationship between the child and the non-abusing mother during the research process. Mullender and colleagues (2002) warn that research on domestic abuse should not undermine or take power from the mother. These understandings are rooted in ideas that domestic abuse is an attack on the mother and child relationship. Following this, any intervention (including research) must be mindful of this and not act to further undermine the relationship. Excluding women from the research may have been interpreted as an example of this. Recently Thiara and Gill (2012) have highlighted the importance of mothers' accounts to the issue of child contact when there is domestic abuse. They argue that children may

not be fully aware of the extent of domestic abuse that their mothers have experienced; therefore mothers' accounts provide crucial insights to any discussion on contact. It can of course also be argued that mothers may not be fully aware of the entirety of children's experiences. Nonetheless, both family law and domestic abuse research provided reasons for including women in the research.

More weight was given to the idea of involving women after considering the barriers that may have been faced in gaining access to children. Other research shows that adult gatekeepers can restrict access to children, out of concern about children's vulnerability and harm that researching a sensitive issue with children may have (e.g Hill, 2012). This has been an issue for others who have attempted to research with children and their views about contact in the context of domestic abuse. McKay (2012) reported barriers she faced in accessing children that ultimately led to a change in her research plans. Therefore, a decision to exclude women from the study risked contributing to problems with accessing children. After considering these pragmatic and ethical issues, I reached the decision that the research would involve both children and their mothers.

The research did not involve fathers. This was not because the perspectives of fathers were not considered to be important to the issue of child contact. Clearly fathers are key to any discussion about contact. Mothers' inclusion in the study was driven by pragmatic and ethical reasons. Involving fathers as well as mothers risked children's accounts becoming dominated by the parental dispute that existed about contact. However, of greater importance was the potential that fathers' participation might undermine children and mothers' safety. As chapter three highlighted, domestic abuse does not always end at separation and disputes about contact can become a focus for this. I was concerned that fathers' participation might in anyway contribute to or exacerbate existing problems. As other contact and domestic abuse research has found, involving fathers can comprise whether children feel able to participate in the study. Aris et al's (2002) research on child contact centres in circumstances of domestic abuse involved children, mothers and fathers. They reported that children

in particular were frightened to discuss contact, as they were concerned their father would discover what they had said.

4.2 Design overview

The research involved separate in-depth interviews with eighteen children aged between 8 and 14 years and sixteen mothers. Children and mothers in the study predominantly identified as White Scottish. There was one family who identified as Chinese and another who identified as Asian. All child participants had experienced contact with their non-resident fathers following parental separation where there was a history of domestic abuse. The age group of children initially selected was 12-14 years. During fieldwork the age range was lowered to 8 years. This was primarily because support services were able to identify a number of younger children who were willing to participate in the study more easily than they were older children. A breakdown of the age and gender of the children is given in Table 4.1.

Table 4.1 Age and Gender of Child Participants

| | Age 8-10 years | Age 11-12 years | Age 13-14 years |
|-------|----------------|-----------------|-----------------|
| Boys | 8 | | |
| Girls | 2 | 4 | 4 |

The age range of children encompasses both children that a court presumes to be sufficiently mature (those 12 and over) and children where there may be a degree of ambiguity over whether they are mature enough to express a view. The research sought, as far as possible, to involve children who were no longer ‘living with’ domestic abuse but who had or previously had contact with a non-resident parent. Involving participants who were no longer living with domestic abuse was intended to help reduce risks of distress or danger that might exist through participation in the research.

Children and mothers were given the option of having a ‘supporter’ present during their interview (for example a support worker, friend or sibling). If siblings wished

to participate in the research, they had the choice of being interviewed separately or together. There were a total of three sibling groups that participated in the study. Two of these groups opted to be interviewed together and one opted to be interviewed apart. One girl brought her friend to the interview. Her friend had been a great support to her during her parents' separation and through the subsequent problems she had with her father.

4.3 Interviewing child-mother dyads

The research aimed to be child centred so children were the primary source of data. However, as discussed earlier, mothers were also interviewed in order to capture a legal history about contact, as well as other important contextual information such as particular concerns they may have had about contact.

Interviewing both children and their mothers had positive implications for the study. While there were a few children interviewed who had a good grasp of the legal proceedings that had taken place, there were many who did not or only had partial knowledge about the events. Interviewing mothers allowed this legal narrative to be added to children's accounts and provided a more complete picture. There were also occasions where children were not aware of the extent of the abuse, which had taken place, particularly in relation to sexual violence. If I had not interviewed mothers, important information about why there may be concerns about contact would have been missing.

Interviewing mothers also allowed me to foster some sort of relationship that I believe made some more confident and comfortable in allowing me to interview their children. At the end of my interviews with mothers I was able to spend some time describing what would happen during the interview with her child and to show her some of the activities that the child and I would do. Having this opportunity hopefully provided some reassurance and if mothers wanted to do so, they could ask any questions they might not want to ask in the presence of their children.

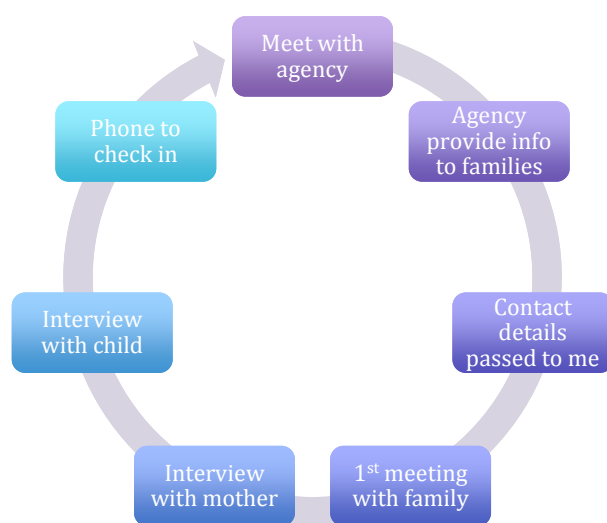
However, I believe that the decision to interview both children and mothers had some negative consequences. Mothers were more articulate than children and were able to more confidently engage in interviews. While the focus of interviews with mothers was on legal aspects of contact, it was difficult at times to separate these from mothers' experiences of abuse. Mothers' stories about experiences of contact and domestic abuse were compelling; it has been difficult not to 'lose' children's voices in these stories. The tension that exists between mothers and children's views, rights and needs is a familiar one that features generally in my work in Scottish Women's Aid.

I also wonder whether interviewing mothers affected the interviews I had with children. This was particularly significant after hearing distressing accounts from women about children's witnessing their mothers' abuse or when children were abused. During one interview, a mother recounted how her ex-partner had attempted to strangle her in front of her child. The child also spoke about this during our interview. While we spent some time talking about it, I moved the discussion on and did not ask many questions about. Another mother spoke about how one child had been assaulted by his father during a contact visit. This also came up in the interview with the child and again although we spent sometime talking about it, we did not spend as much time as I did with the child's mother. I wonder whether my prior knowledge of these events affected how I dealt with them in interviews with children. If I had not already spoken to mothers perhaps I would have spent more time on these events. Perhaps my reluctance to explore these in depth was an attempt to protect children and not upset them.

4.4 Access

I developed a staged approach to accessing families. This was intended to both minimise harm to participants and provide opportunities for participants to give and withdraw their consent for the research at different stages. The approach I used for access is summarised in Figure 4.1.

Figure 4.1 Accessing families



Families for the study were accessed via domestic abuse support services. This had both practical and ethical advantages that influenced my decision to recruit in this way. Practically it meant that accessing families who matched the study's criteria was more straightforward than might be otherwise. Support services were able to identify child-mother dyads that had experienced domestic abuse, parental separation and there had been some attempts for contact between the child and non-resident father to take place. Ethically it meant that families would have already had the opportunity to talk about what could be a difficult subject in a supportive setting, in advance of any interviews. Support services undertook a key role in ensuring families who were approached about the research were in a position where their participation would not be seen as an additional burden in already difficult circumstances. Support services were able to approach families who were in a 'good place'. Crudely speaking this meant families who were not in the midst of legal proceedings and not dealing with other difficult circumstances. While this approach had advantages that I have outlined, it also had limitations. It meant that the views and experiences of perhaps the most vulnerable children and mothers, like those not

engaged with support services and those dealing with on-going difficulties, are not necessarily represented.

When recruiting families I was keen to recruit both from and beyond Women's Aid services. Women's Aid is the largest specialist support service for women and children affected by domestic abuse. With significant government investment, their services for children have expanded in recent years. Part of this expansion has seen a shift toward providing services for children affected by domestic abuse who are living in the community, not just those who are living in or have lived in refuges. Studies that recruit solely from refuge populations like those families engaged with Women's Aid often receive criticism for only researching individuals who have experienced the most 'extreme' forms of abuse and those with low socio-economic status. Although the recent expansions in children's services mean that it would be possible for Women's Aid services to assist in accessing families who have not lived in refuges, these families remain a minority of services users.

With this in mind, I approached other support services that might be able to assist with accessing families who had not lived in refuges. These included ASSIST (the victim support service connected to the domestic abuse court in Glasgow), Children 1st (a national voluntary organisation that provides abuse recovery services for children), Barnardo's (a national voluntary organisations that provides some specialist domestic abuse services), Domestic Violence Perpetrator Programme (a court mandated perpetrator programme that also provides support to adult victims and children), Cedar Projects (Local Authority based pilots of group work for children and mothers affected by domestic abuse) and Child Contact Centres. Negotiating access through these agencies had mixed success. While all the agencies approached identified contact and domestic abuse as an important issue for families accessing their services they, struggled to identify families to participate. Reasons for this were many and some were quite complex. For some, the age of the children they were working with was outwith the range of the study, legal proceedings were current or the perpetrator was a stepparent without parental responsibilities and rights. However, child contact centres presented a unique dilemma. Contact centres

felt uncomfortable promoting the research amongst families, as it did not involve fathers. I explained that the research was intended to be child centred and involved mothers to capture a legal history about contact arrangements, as well as my concerns about children's safety should fathers be involved. However, contact centres remained reluctant to assist with access as they felt their neutral role in facilitating contact would be compromised.

4.4.1 Meeting with agencies

I approached individual support services to ask about their willingness to assist with accessing families. This first contact usually involved a phone call or email where I introduced the research project and myself. I followed this up with a meeting to discuss the research in more detail. During this meeting I would explain why I was doing the research, what interviews would involve, what would happen with the research, criteria for participants and answer any questions they may have. I would discuss what would happen should any concerns about child protection arise and agree a process for reporting concerns to their organisation. This is explained further later in the chapter.

At these meetings I would take research tools that I used during the interviews with children and topic guides for interviewing mothers to these meetings to assist workers become familiar with the project and hopefully allay any anxieties that they may have. Appendix A shows an information leaflet I developed for support services that I would leave with them after the meeting.

4.4.2 Accessing children and mothers

Agencies that agreed to support the research, and facilitate access, identified families engaged with their service who met the participant criteria. They would approach the mother in the first instance and talk with her about the research and ask whether they might be interested in finding out more. I developed leaflets for mothers and children, which were used to provide further information (see Appendix B). If the mother agreed, either she or a worker would then explain to the child about the

research. Mothers and children were asked if they would like to find out more about the project and if so staff sought their permission to pass on their contact details to me.

4.4.3 First meeting with the family

On receiving families' contact details, I would telephone the mother and organise a time where I could come and meet with her and the child. The purpose of this meeting was to provide further information about the research and to begin building relationships between the mother, child and myself. During my telephone call with the mother, I would stress that the first meeting was simply an opportunity to find out more and was not a commitment to participate in the research. These meetings were organised to take place quickly, normally at a time after school and at the family's home.

During this meeting I used an icebreaker to help start the meeting. The mother, child and I would complete the 'Tell me about you' worksheet and share with one another our answers. This gave us all the chance to find out more about one another and to begin developing a relationship. Having spare worksheets and various pens also served as a useful distraction when there were other children around.

Figure 4.2 'Tell me about you' icebreaker

Tell me about you!

| | |
|---|---|
| What is your name? | what is your favourite colour? |
| what is your favourite shop? | what do you like doing in your spare time? |
| what is your favourite snack and drink? | if you could have a super power what would it be? |
| if you won the lottery, how would you spend it? | what would be your dream job? |

After completing the icebreaker, I used the 'You and your dad' diagram as a visual prompt. This was printed on A2 sized paper and used to explain in more detail the research project and what participation would involve. This tended to involve repeating the information that was contained in the information leaflets but was a useful way to ensure families had received information about the project. Often information leaflets had been mislaid or families had not read them.

Figure 4.3 You and your dad



Each circle of the diagram related to information about the research. The table below details the issues that were covered by each part of the diagram.

Table 4.2 You and your dad

| Circle | Issues discussed |
|-----------------------------------|---|
| What's it all about | I gave an overview of the research and what it aimed to do as well as the reasons why I was interested in the research. |
| What will we do | I explained what the interviews with children and mothers would cover as well as providing an introduction to some of the tools that would use in the interview. |
| What will happen afterwards | I explained about what the research would be used for and the use of archives. |
| Who will find out | I spoke about the private nature of interviews for both children and mothers and the limits that exist to this relating to child protection. This also included a discussion about anonymity and how I would maintain this in writing the research. |
| How will I remember what you said | I showed the voice recorder that I hoped to use in the interview if participants agreed. There was an opportunity for participants to record their voice and listen to how they sound. |
| Do I have to take part | I reiterated that it was the choice of the child and mother if they wanted to participate. I explained that their decision would not affect the relationship they have with the support service that had assisted with access. |

At the end of the meeting I would suggest that I would get in touch with the family in a few days to see if they wanted to take part. I opted to do this by telephone following the first meeting as it gave the child and mother time to digest our discussion and have an opportunity to talk together about whether they wanted to participate. I thought that families would find it easier to make this decision without me physically there and hoped that they would find it easier to say 'no' during a telephone conversation than they might in person. There were some families who

said that there was no need to do this and they were happy to take part. Other families seemed to appreciate having time to think about their decision.

There were two occasions where it was not possible to have these first meetings. This was because of the remote location of the families. On these occasions, I incorporated some of the techniques used in the first meeting with the family into the beginning of the interviews with the children. While this did not seem to affect either of the interviews carried out with mothers, I found one of the interviews with one of the children to be quite difficult. A large part of our interview was spent trying to build rapport and trying to reassure and encourage the child who appeared very withdrawn. These challenges may have existed regardless of whether I had met with the child before or not. However, I do wonder if the opportunity to meet would have meant our interview would have been less difficult or perhaps the child would have felt more able and had a better opportunity to withhold her consent to being interviewed.

4.5 Research tools

This section outlines the research tools that were used during interviews with women and children. It reflects on my experience of using these methods and some of the dilemmas that arose from them.

Interviews with women

A detailed topic guide was initially developed for interviews with women (see Appendix C). It focussed on the legal context, the child's experience of participating in decisions about contact, the child's experience of contact and provided the woman with an opportunity to discuss concerns she may have about contact. After the first few interviews, I felt that using the topic guide was cumbersome and disruptive to the 'flow' of the interview. The topic guide had been designed in a linear way that took women from the point of separation to what their current contact arrangements and ended with their recommendations about future contact policy. I had thought that this was a logical way to structure the interviews. It started with the separation that occurred in the past, moved to present contact arrangements and ended with looking

to the future. However, when following the topic guide, I felt that I was imposing a structure that did not 'fit' with the ways in which women spoke about contact or about domestic abuse. It seemed that the topic guide (or my application of it) caused the interviews to be disjointed, repetitive and that at times I felt that I was interrupting women's accounts with my questions.

After the first few interviews were completed, the style of the interview was amended to be more open and directed by the women that were interviewed. I started the interview by explaining I wanted to find about children's experiences of contact. I said that I wanted learn from her about the legal processes that had take place and anything else that she thought might be important about her child's contact with their father. I explained that this would help to contextualise her child's experience. I then asked her to tell me about what had happened in relation to contact since her separation had taken place. From this point, women would then provide an account that more or less addressed the areas that were in the topic guide. I did not abandon the topic guide entirely; I used it as a checklist to ensure that all areas were covered and where necessary asked questions about areas that had not been covered in women's accounts.

This approach seemed to be more conducive to interviewing than following the detailed topic guide. I found that women did not talk about contact in the linear way that the topic guide had encouraged. They would often switch back and forth between different events and different times. This was often because they had separated from their partner on more than one occasion and legal disputes had take place over a period of time and there had been different contact orders in place. Following the topic guide had not easily accommodated this and had appeared at times to frustrate the flow of interviews. Encouraging women to identify what had happened in relation to contact and what they thought was important for me to know enabled women to describe the complex contact histories that their children had. It also gave women opportunity and space during the interview to talk about both contact and domestic abuse in ways that did not feel forced or contrived. From my perspective, interviewing in this way enabled women to set the tone of the interview

and decide the extent of their experience they wanted to share. While this improved the subsequent interviews that took place with women, it also meant that the parameters of the interviews shifted. Interviews with women generated substantially more data than I had anticipated. This was particularly in relation to women's and children's exposure to domestic abuse. During interviews with women, it was sometimes difficult to maintain a clear focus on children's experiences of contact. It was challenging to separate women's views from children's experiences and to ensure that women's perspectives did not overshadow those of children. This is an issue that is discussed further in the analysis section.

As indicated earlier, at the end of the interviews with women, I discussed the research tools that I planned to use during interviews with children. This was intended to alleviate any concerns that women may have about children's interviews and encourage women to ask any questions that they may have about the interviews.

Interviews with children

Interviews with children examined their experiences of parental separation, their participation in decisions about contact, their views and experiences of contact with their fathers and children's advice to adults who make decisions about contact when there is domestic abuse. The interviews used a series of 'task based' or 'participative' research activities that examined these issues. Task based activities are often reported to be an effective way to research with children. This is because children are familiar with the format of task-based activities through school (e.g. Tisdall et al, 2009). It allows for the interview to be 'broken into smaller chunks', therefore making the interview perhaps more interesting and engaging for the child. Using this approach was also appealing because it can dilute the intensity of an interview. An activity can provide a physical entity to focus on rather than the dialogue and interaction between child and researcher. This was considered to be important given the sensitivity of the research topic.

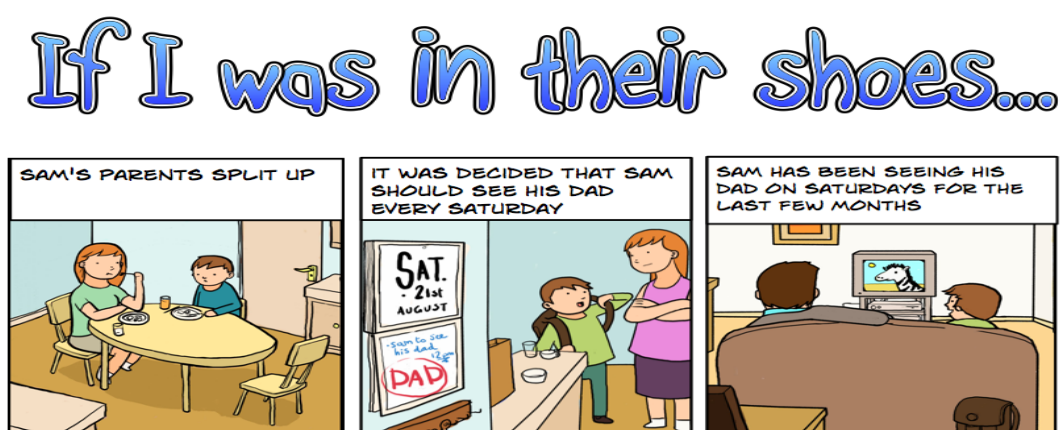
During the interview, a range of materials like playdoh and stress balls were available to children to occupy their hands and play with. This is something that has

been used in therapeutic group work with children affected by domestic abuse to good effect (Scottish Women's Aid, 2011). I hoped that having these resources would assist children to relax during the interview and perhaps make the experience more enjoyable.

At the start of each interview, the child and I took part in an icebreaker. This involved asking each other a series of questions that we would each pick from a hat. The questions were designed to be easy to answer: for example, what country would you like to visit? The icebreaker aimed to relax the child, build rapport between child and researcher and familiarise the child with the interview format.

Once the icebreaker was complete, the interview would move to the 'if I was in your shoes' storyboard. This used a pictorial representation of a vignette to examine children's views and experiences. It was separated into three main components: parental separation, participation in decisions about contact and experiences and views of having contact. An accompanying topic guide (Appendix D) was used to ask children about the character Sam in the story. The storyboard was printed on A2 sized paper. This not only provided a visual stimulus for this part of the interview but also gave something for children to physically focus on when I asked questions.

Figure 4.4 Storyboard



My decision to use the storyboard (or vignette) was influenced by Barter and Reonald's (2000) research on violence in children's homes where they used vignettes. They argue that the physical presence or reading of a vignette can contribute to a non-threatening environment. It does so by creating distance between the researcher and the child. Barter and Reonald further comment that vignettes are particularly suitable for researching sensitive issues: they highlight the potential vignette have for providing children with greater control over the interview and the information that they share during it:

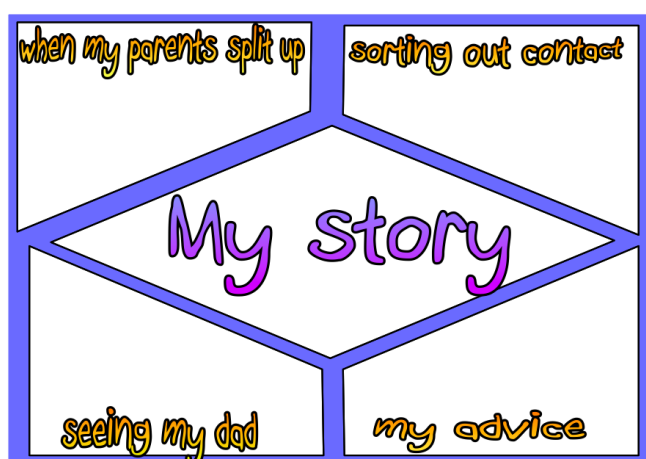
‘Allow[ing] participants the space and time to explore freely their responses and comments provided the opportunity for young people to have greater control over the interview interaction, by enabling them to decide at what stage, if at all, they introduced their own experiences to illuminate their abstract responses’ p319

During the storyboard part of the interview, I did not ask directly about the child's experience: I asked about the character in the story. This was a less direct way to examine children's own experiences. During the interview, the majority of children readily identified with the character Sam, often likening their experience of parental separation to that of Sam or pointing out the differences between Sam and themselves. Children drew directly from their own experiences and their views to explain how Sam might be feeling or the issues he might be concerned with. However there were limitations to using the storyboard method. Using vignettes requires children to imagine and draw connections with their own experiences and an imaginary character or situation. There were one or two children who struggled to do this. When asked questions about how Sam might have felt, they replied that they did not know as they were not Sam and did not know him. There were also a few children who looked to Sam's facial expressions as evidence for how he might be feeling or indication of what his views might be. It is therefore important when using this method to consider the ‘hidden messages’ that may be part of pictures that are used.

Following the storyboard, the interview moved to mapping children's own experiences of contact. The areas examined in the ‘my story’ part of the interview

replicated those of the storyboard: parental separation, participation in decisions about contact and having contact. There was an additional area of 'my advice', which the substantive part of the interview ended on. This was intended to have the interview end on a positive note. I asked children whether from their perspective there were ways in which issues connected to contact could be improved. As with the storyboard, 'my story' was printed on A2 sized paper and there was a topic guide that accompanied this part of the interview (Appendix D). Children were given the option to draw, write or talk about their answers to the questions that accompanied the 'contact map'. The majority of children opted to talk rather than 'complete' a contact map.

Figure 4.5 **My Story**



A few children had already answered the questions in 'my story' topic guide during the storyboard part of the interview. In these cases I did not re-examine these during the 'my story' part of the interview; instead the interview moved straight to the 'my advice' part.

Following the 'my story' part of the interview, the interviews with children were concluded by playing a game of cards. This was a positive way to end the interviews. It was an opportunity to have some fun and lighten the mood after what could have been a difficult discussion. This was something that children seemed to enjoy and felt like a good way to conclude interviews.

5 Ethics

Ethics provide a framework that assists in thinking about how research is carried out in a way that is respectful to participants. I applied for and received approval from the University of Edinburgh's School of Social and Political Science's Research Committee to carry out the research.

Ethical considerations were particularly important for this study because of the nature of the topic and the characteristics of the research participants. The interviews focused on issues that could be sensitive for both children and mothers. Interviews looked at parental separation, decisions about contact arrangements as well as experiences of having or not having contact with fathers. Although the primary purpose of interviews with children and mothers was not to investigate in depth participants' experiences of abuse, these were issues that were raised and discussed during both sets of interviews. This included how such experiences had shaped and influenced contact arrangements and relationships between children and fathers.

Morrow and Alderson (2004) argue that a core set of ethical principles should inform research with children and I would argue that these principles are also useful for research with other vulnerable groups like those mothers who participated in this study. These principles include '*enabl[ing] children to be heard without exploiting them, protect[ing] children without silencing and excluding them and pursu[ing] rigorous enquiry without distressing them*' (Alderson and Morrow, 2004: p12). As well as providing a useful framework for considering ethical dimensions of research, these principles also highlight the complexities that can exist when carrying out research. In essence these principles capture tensions surrounding research participants' rights to be protected during and beyond the research and their rights to participate and be heard. These represent familiar tensions that were present for throughout my research. During this section I will describe how my research dealt with ethical issues and draw from my fieldwork to highlight how ethical dilemmas manifested in practice.

5.1 Consent

From the outset I decided that research design made it was necessary for both the child and mother to give consent to the research. This was primarily because both the child and mother would be participating in the research. I did not ask mothers to consent for their children; however, as the research required both parties to participate, a mother's consent for their child to participate was somewhat implied when she gave her own consent. This, however, did not mean that when a mother gave her consent it was assumed that the child also gave his or her consent. Children's consent was treated as a separate entity and was sought. There were two occasions during the research where the mother consented to the research and the child refused to participate. In the first case this took place immediately after the first meeting with the family, which meant no interviews took place. In the second case, the child withdrew his/her consent on the day of the interview. This meant that the interview with the mother had already taken place.

The process of securing consent from both children and mothers was intertwined with the staged approach to securing access to families. When support workers spoke with families I asked them to provide simple information leaflets I developed for the research. These leaflets aimed to ensure families were informed about the research and what participation involved before agreeing to their contact details being passed to me. Having a first meeting with the majority of families before interviews gave further opportunities to get information about the research and ask questions. This also meant children and mothers had time and space to decide whether they wanted to participate or not. At the end of these first meetings, I gave families a consent form to keep and if they decided to take part in the research to complete. This acted to 'verify' that both children and mothers were giving their consent to participate and to clarify what they were consenting to. The consent form reiterated many of the issues that we discussed in the first meeting. It asked families to confirm they knew and understood:

- What the research was about
- That they could withdraw their consent at any stage of the research

- That they did not have to answer questions they were asked if they chose not to
- The limitations of privacy and confidentiality in relation to child protection
- Their decision whether a copy of a transcript of their interview could be kept in an archive

Before interviews with children and mothers commenced, I would reiterate these issues surrounding consent. Some children seemed to enjoy this and would tell me that they remembered what we had discussed previously and tell me their recollections of our discussion. One child in particular found this repetition onerous and was keen to get on with the interview which meant I cut short our discussion about consent.

Throughout interviews I tried to be alert to how children and mothers responded to the questions that I asked and the interview as a whole. I hoped that being aware of participants' body language and the way in which they reacted to questions would give clues as to whether there were parts of the interview that participants found upsetting or did not want to answer. There were a few occasions when mothers' and children's responses meant I cut short questioning about particular themes. For one mother this was when she was describing the abuse she had been subjected to before separation. When she spoke about the abuse she described it as sexual and gave what I interpreted as strong signals that she did not want to discuss it in depth. While she did not say that this was something that she did not want to discuss further, I felt that her body language and the way in which she contained the conversation meant that this was not an issue she wanted me to explore further.

A similar occasion arose with a child who tried to change the parameters of the interview. During the interview he tried to change the focus of our discussion so that it was about making a film or about superheroes rather than focusing on the exercises used during the interviews. I tried to persevere with interview and re-engage the boy with some of the activities designed for the interview. Whilst this worked for a while the boy continued to try to change the parameters of the interviews. I did not ask the

boy as many questions as I did in other interviews and in the end cut the interview short. I do not know whether in attempting to change the parameters of the interview the boy was actively trying to withdraw his consent to the interview. Regardless of whether his actions were a strategic way to dissent to the interview, his disinterest in the interview activities meant for me that he did not want to participate.

5.2 Dealing with risk and child protection

I established child protection procedures for my research before undertaking fieldwork. This began when meeting with support services to seek their agreement that, should I have any concerns about the safety of children during my contact with families, I would share these with the child's key worker. This would mean that the concerns would be conveyed to an organisation that had an on-going relationship with the family and who would be in a more informed position to take necessary action to safeguard the child than I would. Where possible, I would talk to the child or mother about any concerns that I had before sharing these with the agency and encourage the child or mother to be part of this. Circumstances where this might not have been possible were when I thought in doing so would further endanger the child.

During the first meeting I had with families, I spoke about how our discussions from interviews would be kept private unless as a result of something that came up in our interview left me worried that someone may not be safe. At this point I explained the person I would share my concerns with would be someone from the referring support organisation. Families seemed content with this.

While it would have been impossible and perhaps not useful to develop a comprehensive list of all the child protection concerns that could arise during interviews, it would have been useful at the outset to spend more time thinking about how I would have dealt with different types of child protection concerns. Giving more thought to what constitutes a child protection concern would have made it more clear to me what required me to take further action and what did not. After reflecting on the fieldwork, I believe it would have been beneficial to consider from the outset

the different responses required for dealing with events. This was particularly in relation to historical issues that had been investigated by statutory agencies but where no action had been taken. Child protection issues that arose during interviews were dealt with differently. Any action or non-action related to the type of child protection concern and to the context of the individual child and the family.

There was only one occasion where I felt the decision to take any action was clear-cut. This was when a child revealed that during her last contact visit with her father, her father had assaulted her adult brother and the police had been called to the house. As the assault had taken place on her adult sibling rather than on her mother or the child, this incident did not trigger an automatic referral to the Children's Reporter. In this instance I sought permission of the child to share this information with the support agency. The child consented to this and I shared this information.

There were other occasions where it was less clear what action to take. For instance, there were several families where, although some children lived with their mother following separation, siblings had remained with their father. In one such case, the mother told me that since living with his father the child had stopped attending school. This, coupled with the social worker's insistence that the mother leave her partner so as to protect her children, raised obvious concerns about the welfare of the child who had remained with his father. I discussed these with the mother during our interview and she explained that she had already raised these with a social worker who had said they would not intervene. After our discussion, I decided not to share my concerns as these issues had already been investigated and no action had been taken. The support agency that referred the family was well aware of the circumstances surrounding the child who lived with the father. My belief that re-sharing this information would have no effect on the situation was the biggest motivator for my decision.

When circumstances arose where I felt unsure about what to do. I relied on my supervisors to act as a sounding board to discuss my concerns. This was a useful

resource and mirrors the approach taken in support services where individuals are not left with sole responsibility for making decisions about child protection.

5.3 Privacy and confidentiality

Alderson and Morrow (2011) describe privacy as ‘avoiding undue intrusion into [their] personal affairs’. Whilst my research required investigation into children’s and mothers’ private affairs I avoided ‘unnecessary intrusion’. I did not ask children or mothers to provide information about events that did not relate to my specific research questions. For example, I did not ask participants to recount detailed accounts of the abuse that they had experienced or had witnessed. As I have indicated earlier, these issues did arise during our interview. Whilst these issues are salient to the issue of contact and domestic abuse, they were not the focus of the research. However when these issues came up in interviews I did ask additional questions. I believe that it would have been disrespectful had I ignored or changed this line of discussion without acknowledging or showing interest in the experiences that participants were sharing. By talking about these issues, participants had indicated that they felt they were important to research.

It was important for participants to have a private space for interviews to take place. In practice this was easier to secure for women than it was for children. Interviews with women tended to take place at home whilst children were at school. This meant that our interviews took place when no one else was at home. Interviews with children however were more problematic. Mothers respected children’s privacy and gave us uninterrupted space and time to have our interviews. This often meant that the interview would take place in the child’s bedroom or in the living room with mothers making themselves scarce. Although space was offered for these interviews to take place, I was conscious that in a few occasions sound proofing in homes was poor meaning that it would be possible for interviews to be overheard. On one occasion, this felt particularly important with a child who was particularly angry with her mother about her parents’ separation and her mother’s subsequent re-partnering. The fact that the television in the living room was audible from the child’s bedroom where the interview was taking place meant I was concerned that our interview could

be overheard. I did not want to probe or ask the child specific questions that might have touched on the child's anger towards her mother because I was concerned this could be overheard and might leave the child in a difficult situation. On another occasion the mother left me with the children that I was interviewing and she took her younger children outside to a nearby park. Unfortunately, they returned before the interview was concluded. This meant that the children's siblings had nowhere to go and hung around while the interview was taking place. This meant that the interview was somewhat interrupted and it was not possible to ask as many questions as I had intended as the children's privacy could not be guaranteed.

When designing the research, I purposely decided to interview mothers before interviewing children. I hoped that ordering the interviews in this way would offer children some reassurance that I would not share the information that they had shared with me with their mother. This also had practical advantages in that it meant that I would have an idea of the legal narrative before interviewing the child. I hoped that this would make it easier to understand the child's account.

5.4 Distress and damage

The study was concerned with what can be a distressing and damaging issue. I was keen that the research design and the methods used in the study would limit the distress and damage caused by participating in the research. As already described, the approach taken to accessing families meant that children and mothers were already engaged with support services. I hoped that this would mean that they would have already had the opportunity to talk about their experiences in a supportive setting and therefore limiting the distress caused by talking about a difficult topic. Support services also assisted in ensuring that particularly vulnerable families were not referred to the study. Whilst this means that their views are not represented in the study, it also means that the families who participated were not asked to take part in what could be distressing and damaging experiences whilst trying to contend with other issues. The methods used were designed to allow children and mothers select which part of their views and experiences they wanted to share. I hope that this enabled participants to set their own limits on what they wanted to share in the

interview and therefore reduce distress and damage caused by obtrusive questioning. The way in which interviews were closed also attempted to reduce distress or at the very least raise participant's awareness about where they could get further help if it was needed. Appendix E shows the information that was provided to participants at the end of the study.

5.5 Incentives

Participants were not offered any financial or material incentive to take part in the research. As discussed earlier, I telephoned participants after the interview to 'check in'. Following this I sent cards to both child and adult participants to thank them for their participation.

6 Analysis

The majority of interviews were recorded using an audio recorder. These were then transcribed following the interview. I transcribed around two thirds of the interviews and employed someone to transcribe the remaining interviews. There was one child who did not give permission for her interview to be recorded. In this case I kept minimal notes during the interview and wrote these up more fully after the interview was complete. I wrote brief notes after each interview on things that I had thought were striking, interesting or surprising from the interview. The transcriptions and the written notes formed the data that was analysed. Data was kept on a password-protected computer. It was quickly anonymised following transcription and was stored separately from any of participants contact details. Pseudonyms have been used in the discussion of the research findings. Some of the participants' details have been changed to ensure that they cannot be identified.

I had intended to use NVivo to assist with organising and managing the data during the analysis phase of the research. However, as the data were not too large, I found that it was easier to carry out the analysis without computer software.

Analysis began after the first few interviews had been completed and during the transcription of the interviews. Listening and re-listening to the interviews helped make the data ‘stick’ with me. The emotional aspect of transcribing the data surprised me. I found the process of listening and writing accounts of abuse or feelings of distress to be far more upsetting than carrying out the interviews. Children and women’s accounts seemed starker when they were listened to out of the context of the interview. Perhaps this was because during the interview there are other things that distracted me from fully appreciating the magnitude or severity of some of the accounts. Or perhaps the ‘disembodied’ nature of a recorded interview means that is nothing to anchor these accounts to. The researcher cannot see any non-verbal cues from the participant to gauge, whether they are coping or if they appear very distressed. Nor did the transcripts contain any of the discussion that participants and I had following the interview; we would often immediately talk about how they felt and I would follow this up by telephoning a few days after to ‘check in’.

I read and reread each transcript and then wrote a *précis* for each of them. I read the transcripts for children and mothers together and then read them separately. I began to code the data contained in the transcripts. I would make notes in the margins and highlight sections of text. The codes that I developed combined themes that developed from the literature review (e.g. manipulation), questions from the topic guide (e.g. barriers to participation) as well as issues that were new or emerging (e.g. siblings living apart). Notes were reviewed and refined into key phrases or key words. I used Word to create and organise a coding structure that was based on these key words and phrases. These were expanded then refined as chunks of data from transcripts. They were cut and pasted from transcripts and placed under code headings. This was an iterative process that required many revisions and refinements. As I began to write about the data, the analysis began to shift from reporting what people had said to interpreting what the data might mean and the implications it has for theory.

7 Conclusion

This chapter has discussed the methodology used for the research. It has provided the rationale for decisions that were made about the methodology as well as reflexive accounts about my experience of conducting this research. We now turn to the findings of the research.

Domestic abuse before parental separation

1 Introduction

How domestic abuse is defined and understood has implications for how it is addressed by courts in disputes about contact. *Chapter Three* highlighted the importance of considering the context of the relationship when examining acts or incidents of violence. It reported that a focus on a particular assault does not consider that this occurs against a backdrop of coercive control. *Chapter Two* also identified that domestic abuse is not defined in Scottish child contact legislation. The review of case law found examples where domestic abuse was treated in a manner that has been criticised by authors of feminist research (e.g. Stark, 2007, Johnson and Leone, 2005, Pence and Paymar, 1993, Dobash and Dobash, 1980). Findings of fact in family actions are often based on establishing whether there was evidence of particular incidents of violence or abuse occurring at particular times. It appeared that there was a lack of a robust analysis of the parental relationship in general, and whether these incidents formed a larger context where violence and abuse was used to coercively control a partner.

Given the emphasis placed on examining the context of the relationship by other authors, this chapter reports on the domestic abuse that took place prior to separation. It focuses specifically on domestic abuse that children were exposed to. This is important given the findings reported in *Chapter Two* that in family law domestic abuse may be hidden or abstracted from court proceedings (e.g. Hester, 2011, Trinder et al, 2010a).

During interviews, neither children nor women were asked whether their experiences corresponded with particular definitions or conceptualisations of domestic abuse.

Women were asked to describe the circumstances of their separation and asked explicitly if their children had ever been ‘caught up’ in domestic abuse that had taken place. From these questions women provided detailed accounts of the domestic abuse they had experienced and how their children had been exposed to domestic abuse. It was from these accounts and during analysis that the salience of feminist perspectives of domestic abuse emerged.

During interviews children were asked if there had been ‘hurting or fighting in their family’ and were encouraged to elaborate on this. The majority of children were less confident and forthcoming about their experiences of domestic abuse when compared with women’s. This may have been due to limitations of the research design or children reluctance to dwell on or share these experiences with me. Regardless of the reason, it has meant that this chapter relies predominantly on the accounts of the women who were interviewed.

This chapter makes explicit what domestic abuse is. It demonstrates how it was a routine part of women’s lives and how children were exposed to it. The term domestic abuse denotes a range of behaviours. Having a ‘catch all’ term for these behaviours may effect a disconnection from the experiences of women and children. This chapter attempts to bring to the fore what domestic abuse is and how it affects the lives of children. It sets the context for the subsequent chapters’ examination of views and experiences of contact when there is domestic abuse.

2 An overview of the families

Before exploring the participants’ accounts of domestic abuse, it is useful to first provide an overview of the families who participated in the study. The table below identifies the key characteristics of the child participants’ by their family. It demonstrates the range of contact arrangements that were in place across the sample as well as the variation in length of time since separation.

Table 5.1 Key characteristics of child participants by family

| | Mother | Child 1 | Age | Gender | Child 2 | Age | Gender | Type of contact | Length of time since separation |
|----|-----------|----------|-----|--------|------------|-----|--------|--|---------------------------------|
| 1 | Laura | Clare | 11 | Female | - | - | - | Court ordered unsupervised contact | 5 years |
| 2 | Anna | Michael | 9 | Male | - | - | - | Court ordered unsupervised contact | 4 years |
| 3 | Helen | Maria | 12 | Female | - | - | - | Non-court ordered unsupervised contact | 2 years |
| 4 | Pamela | John | 9 | Male | - | - | - | Court ordered unsupervised contact | Less than 1 year |
| 5 | Lucy | Hannah | 13 | Female | - | - | - | No contact order made by court | 1 year |
| 6 | Danielle | Harry | 9 | Male | Toby | 9 | Male | Court ordered unsupervised contact | 5 years |
| 7 | Sophie | Paul | 9 | Male | Ruby | 8 | Female | Court ordered unsupervised contact | 2 years |
| 8 | Jane | Lisa | 13 | Female | - | - | - | Contact agreed by parents | 7 years |
| 9 | Emma | Luke | 9 | Male | - | - | - | Court ordered supervised contact | 3 years |
| 10 | Annabelle | Ross | 10 | Male | - | - | - | Court ordered unsupervised contact | 4 years |
| 11 | Lydia | Victoria | 12 | Female | - | - | - | Court ordered unsupervised contact | 2 years |
| 12 | Jennifer | Joanne | 8 | Female | - | - | - | Court ordered unsupervised contact | 18 months |
| 13 | Mary | Suzanne | 11 | Female | - | - | - | No contact ordered by the court | 4 years |
| 14 | Alice | Josh | 8 | Male | - | - | - | Court ordered unsupervised | 2 years |
| 15 | Nicola | Michelle | 13 | Female | Jacqueline | 13 | Female | Contact agreed by parents | Less than 1 year |
| 16 | Freya | Leo | 8 | Male | - | - | - | No contact order made by court | 5 years |

In general the age and gender of children did not emerge as prominent issues during the analysis. However, there were two exceptions to this. Gender appeared influential to siblings who remained or returned to live with their father following separation. All of these cases involved male children remaining or returning to live with their father. This is discussed in *Chapter Eight*. Younger children struggled to be apart from their mother during contact and expressed a desire to speak with their mother during contact. Again this is discussed in *Chapter Eight*. The sample for this study is small, it is therefore important that any interpretation drawn about the significance of age and gender is treated with caution. However, it would be useful to explore the influence of both age and gender in more depth in future research.

The length of time since separation had some effects on experiences of contact but not necessarily in the way one might expect. In brief, contact arrangements were often made informally amongst parents immediately following separation. However as *Chapter Seven* shows these arrangements tended to break down and as is discussed in *Chapter Eight*, experiences of contact were predominantly negative. The study found experiences of contact and relationships did not improve in time following separation. In light of these findings it would be important for future research to examine contact arrangements over time. It may well be that families are able to make their own initial contact arrangements, but these may not endure. It would therefore be important that future research looks at how contact arrangements and experiences unfold over time.

3 Identifying men's behaviour as domestic abuse

All the women who were interviewed experienced domestic abuse by their biological child's father. However women had not always used the term 'domestic abuse' to refer to their ex-partner's behaviour. Women frequently reported that they had not realised that what they were experiencing was domestic abuse. This included women who had been subject to severe physical violence. There were women who thought the abuse they experienced was a component of relationships. Domestic abuse was

something that was expected, an everyday part of women's lives. In the following extract, Nicola reflects on her daughter's decision to stop inviting friends to her house because of her father's behaviour. It was her daughter's decision that led her to question her husband's behaviour.

I just thought, och, you ken, your dad was in a bad mood, ken he's a crabbit devil. And just sort of palm it off to that. But like I say, not realising that was abuse. At the time I just thought that was normal.

During the interview, Nicola described enduring two decades of physical and emotional abuse whilst living with her husband. In the following extract, she describes the first assault her husband carried out in the early part of their marriage when her son was ten months old:

I was in bed with my son, he come in and put the light on and started shouting, how dare I tell him to stay in. And, it was only just because it were our first New Year together with my son. And, my son was crying and that, so I got up and started arguing back with him, and the next thing he stuck his head into me and blackened my eyes, while I was holding my son at the time. He lifted a pot and hit me over the head with it, and then started kicking and punching me, and all the time my son was screaming and he was just, continued attacking me, regardless of me holding my son and him screaming.

The assault that Nicola describes was severe and sustained. Her husband used his head, feet, fists and an object to inflict injury. This assault was triggered by Nicola's husband's perception that she had told him what to do. During the attack he showed a disregard for his son. His son was distressed and because he was in his mother's arms he was vulnerable to injury during the attack. Nicola stresses how the presence of their baby did not prevent her husband from carrying out this attack. This disregard for children's safety during attacks on women was repeated in other parts of Nicola's interview and in interviews with other women. Nicola's descriptions of her husband's behaviour can be seen to correspond with Stark's (2007) theory of coercive control. The behaviour restricted children's everyday lives. They did not want to invite friends home as a consequence of their father's behaviour. Nicola constructed the first assault that her husband carried out as a 'punishment' for her questioning his authority, therefore framing his violence as an effort to control her.

The abuse Nicola experienced had serious consequences for her mental health: she was depressed; routinely self-harmed; contemplated suicide; and had suffered a nervous breakdown. However, for the majority of time that Nicola lived with her husband, she did not identify her partner's behaviour as domestic abuse. This was repeated in other interviews. For instance, Pamela did not categorise her husband's behaviour as domestic abuse until she ended their relationship. The abuse Pamela experienced involved physical violence, as well as being prevented from leaving her home, unless her husband accompanied her. This confirms Stark's (2007) view that as well as violence, domestic abuse involves intimidation and isolation. However, Pamela explained that when she lived with her husband, she did not view or refer to her experience as domestic abuse. In the extract below, she explains that when the police attended her house following an assault her husband had made on her, Pamela did not fully understand their concerns about how her husband treated her:

...I don't think I really understood the abuse until the police came in. Then the police had said how wrong it was and everything else. And I thought what are they talking about? And over the last year when I had been thinking about it, the police were absolutely one hundred per cent right with what they were saying. It is not right. You know but I couldn't really see it. I thought maybe he just cared for me. You know, he didn't want me speaking to anyone. Maybe it's just because he is jealous. You know I always had excuses for him. But I can see now [that] everything he did was wrong.

In this extract Pamela describes some of the tactics her husband used to isolate her. Isolation is a hallmark of domestic abuse and is addressed in the research of Bowstead (2001) and Warrington (2001). It increases women's vulnerability by reducing their access to support and increases women's reliance on the perpetrator. Whilst living with her husband, Pamela rationalised this aspect of his controlling behaviour constructing it as jealousy stemming from the strength of his feelings for her. Her phrase "*I couldn't really see it*" suggests that whilst in the midst of abuse, she could not see the behaviour for what it was. However, having time away from her husband as well as support from a domestic abuse service enabled Pamela to reflect on and consider her husband's behaviour differently. The importance of having time away from abuse to develop a different perspective on partners' behaviour was repeated in other interviews. Emma, for example, commented that it

was not until she had left her husband that she was able to see how dangerous his behaviour was:

But, I think also, once you are a wee bit disconnected with it, you know, you are out of it and you are looking back in on it, you realise how bad it was. And actually, there is sometimes I think, it is like watching a bad movie, you think, that didn't happen. And you feel really stupid telling people [about] incidents, and they look at you and think, you know?

Emma's feelings of being 'disconnected' from abuse were common amongst women. For many it was not until they lived apart from the perpetrator that they were able to assess how serious the abuse was. Her comment "it's like watching a bad movie" highlights how extraordinary living with domestic abuse can be. When Emma reflected on the abuse she experienced, it seemed surreal. In the extract above, Emma appears embarrassed to talk to people about the abuse she experienced. There is an inference that people might disbelieve her or not understand why or how could be a victim of domestic abuse. Emma's comments make connections with Stark's (2007) work on how women become entrapped in relationships with abusive men.

3.1 Men's convictions for domestic abuse

It was typical for men to have few or no convictions relating to the abuse they had subjected the women interviewed to. The vast majority of domestic abuse they perpetrated did not come to the attention of the police. Even on the occasions where police had become involved, there were a number of factors that affected whether women supported the police in their investigation and in bringing charges. These included: whether women viewed the relationship to be ending, whether women thought police involvement would improve their situation and women's feelings of guilt over the possibility that their partner would receive a conviction.

Women often did not support the police bringing charges if police involvement came prior to their decision to end their relationship. Women did not want to be involved in bringing criminal charges against their partner when they wanted their relationship

to continue. In the extract below, Pamela gives an example of how the results of police involvement may be in direct opposition to the relationship that women may want to have with an abusive partner:

He was banned from coming into the same village as me, I think it was for a month. But we were due to get married.

Banning Pamela's partner from being at the same place as her is an obvious attempt to protect her. However, her quote shows that the police intervention was not consistent with her feelings about the relationship. Pamela had been planning to and indeed went on to marry her partner. There was a disconnect between her views about the future of her relationship and the authorities' response to her partner's abuse. While Pamela wanted to marry her partner, the authorities had enacted mechanisms intended to keep them apart.

There was a view from some women that involving the police to deal with their partners' abuse was futile. While having a partner arrested could be a reprieve from his abuse, it was only temporary. It was likely that he would spend one or two nights in jail and then be released. On his release he could return home and the consequences for involving the police might not be worth the reprieve. Women weighed a number of issues in their decisions to involve the police or not. This is exemplified in the extract from Nicola's interview:

Fiona: Was there ever any criminal proceedings against him? Was he ever charged or convicted for any of the violence?

Nicola: No, when he had been, that night when he had been put in the cells, he'd just been let out the next day.

Fiona: That was it?

Nicola: That was it. So you sort of think, well, there's not much point to that is there? I suppose, probably, I can't even remember if the police asked if I wanted him charged or not, probably I would have said no, if they did ask

me, I would have said no, probably because it's just the repercussions. And then when you're alone with a wee boy who's like two and a half, and you're pregnant with twins, you're thinking, oh my God, if he's not here, how am I going to raise them?

Nicola highlights that involving the police may lead to the perpetrator being removed from the family home for a short time. She alludes to the potential “repercussions” of having her partner arrested. Having her partner charged could antagonise him and make the abuse worse. Nicola highlights how women’s vulnerability and dependence on a partner can also be key to any decision whether or not to press charges. This is important in cases of domestic abuse, especially when children are involved. That Nicola was pregnant and had a young toddler made any decision to have him prosecuted all the more difficult. This correlates with Stark’s (2007) ideas that in order to end domestic abuse we need to improve the position of women in society so they are not dependant on men. From Nicola’s perspective, pressing charges would signal the end of their relationship and meant that she had also to consider the implications of being a lone parent to three young children. After weighing these issues Nicola said she would not press charges, meaning that her husband would not receive any convictions for the abuse he carried out. Nicola’s access to justice was influenced by the police response to domestic abuse and her dependence on her husband.

Some (3) women described being reluctant to seek assistance from the police as they thought it would mean social work³⁸ would become involved with their children. Women’s reluctance to involve these agencies was such that they would not phone the police when they needed assistance. Instead, they would try and placate their partner to avoid police involvement. Lydia provides an example of this in the extract below, where she describes how her ex-partner continued to harass her but she avoided seeking help from the police:

..sometimes I’d let him in because I wasn’t wanting the police. And I thought it was bad for me because the police would send a report to social work, then social work might think that I am a bad mum

³⁸ Social work refers to the statutory agency that has child protection responsibilities in Scotland.

Although Lydia did not want her ex-partner in her house, she often let him in so as to prevent him from ‘causing a scene’ and prompting neighbours to call the police. Lydia was anxious that if the police became involved, social work would also become involved. She feared that social work would cast her as a “bad mum”. It was not clear from Lydia’s interview whether her hesitance for social work involvement was because of her concern about the stigma associated with social work or what a social work intervention might bring. Regardless of the reasons, Lydia’s experience highlights that women may be reluctant to seek help and assistance from police and social work in a context of domestic abuse.

Five women described their reluctance to involve the police as stemming from their feelings of guilt. Women worried what about the consequences might be for their partner. For instance, although Sophie felt that her partner’s behaviour needed to be addressed, she thought that being arrested would not help him. In the extract below, Sophie describes the events that led to her husband being arrested and charged with a domestic breach of the peace and her feeling surrounding this:

He had been threatening violence that particular day, he hadn’t actually been physically violent to me, but had been threatening to kill me and things like that. So, we (Sophie and her two children) actually left the house and ran to my neighbours, just a kid under each arm, and ran to my neighbours and asked them just to phone me a taxi, just to get away. He then decided that it was much better to phone the police because Tommy [husband] would know where we would be going, we would be going to my mum’s. Tommy would have known that.

I felt incredibly guilty after it because I thought, my initial thoughts and my thoughts prior to us separating, were not that he needed...his behaviour was outrageous, but I thought he needed medical help as opposed to criminal intervention. So I felt incredibly guilty that he had been arrested for that.

From this extract it can be inferred that violence and threats of violence were things that Sophie had become accustomed to; she uses the phrase ‘that particular day’ to distinguish between occasions and incidents of abuse. The way in which Sophie describes her husband ‘threatening to kill me and things like that’ implies that this was unremarkable. These were threats that were similar to or the same as others he had made previously. However the threats to kill Sophie had frightened her. She had

gathered her children and run to a neighbour's house. Sophie had not intended to call the police, wanting instead to go to her mother's house. It was her neighbour's concern for her safety that led to the police being called. Sophie's neighbour was worried that her husband would know where she was going and follow her there. Ultimately the decision to arrest and charge her husband rested with police. Despite this and the fear that Sophie's husband caused, Sophie still felt 'incredibly guilty' that her husband was arrested. Sophie's feelings of responsibility for her husband are mirrored in other research (e.g. Pain, 2012, and Herman, 1997). This indicates the complex emotions and feelings that women navigate when living with domestic abuse.

4 Living with domestic abuse

This section examines in more detail the nature of domestic abuse. It broadly discusses the domestic abuse that women and children lived with. It highlights some of the ways that women and children's lives are routinely affected by domestic abuse. It focuses on the difficulties that exist when leaving and attempting to leave an abusive partner and father.

4.1 The nature of domestic abuse

The abuse women experienced spanned physical, sexual, emotional and financial abuse and corresponded with contemporary understandings of coercive control. Women described the assaults they sustained and how their partners attempted to control their lives. Before separation, domestic abuse affected women and children's daily lives. They lived in an atmosphere of fear and intimidation but employed many strategies to minimise the impact of the abuse they lived with. Women and children often avoided spending time with the perpetrator. Older children described spending time in their bedrooms or at friends. Many women slept in their children's bedrooms. This was a strategy motivated by fear of physical or sexual violence, rather than by the state of their relationship as exemplified by the extract from Laura's interview:

I actually went back to sleeping in the same room as Clare [daughter] because I was terrified of him.

Several women said that police advised them to sleep with their children if they were worried that their partner's abuse may be escalating. However, the rationale behind this advice was unclear. However it appeared that sleeping with a child was a means to reduce the risk of or the severity of an attack made. Sleeping with a child may indeed be an effective way to reduce the risk posed by a perpetrator but it also tells us about the serious way that domestic abuse affects lives. Women's regular assessment of whether or not it would be too risky to sleep in their own bed underlines how encompassing domestic abuse can and how fear can characterise the lives of women and children.

Women spoke about how they would predict when their partners' abuse would escalate. They were alert to his mood and whether it might signal an abusive episode. In Emma's extract below, she describes this and the strategies she used to cope with the abuse she was subjected to:

There is a build up to it and then there is this feeling when you know that it is really bad, actually, cos it goes in cycles of his mood swings. If he gets to a really bad point, you're actually thinking, it is really bad just now, but I know that next week is going to be really good cos he'll have got it out of his system. So I am actually looking forward to next week, so let's just ride the storm and we will get onto a good patch. Which seems a ridiculous way of coping with things.

Emma infers how she anticipated when he would be abusive, using his mood and her own feelings to gauge how serious an abusive episode might be. Emma's description of coping with abuse by focussing on the next week shows how intrinsic domestic abuse can become in women's lives. It is something that women simply have to endure and that will be repeated.

Helen provides a further example of how her and her children's lives were affected by domestic abuse. When the abuse was particularly severe, Helen and her children would flee their home. Her description below provides a stark example of the

strategies women are required to use to protect themselves and their children from domestic abuse:

There was times we had to leave the house during it, and I would just grab him, and Maria was just a baby at the time, and I would put them in the car seats and we always slept at a service station, we would park at the service station.

Mid-attack, Helen had to gather her children and flee their home. The phrase ‘we always slept at the service station’ underlines that this was not a unique event. Attacks made by her husband were frequently so serious that she and her children slept in their car at a service station in order to be safe. Across all the interviews women described how they and their children’s lives were routinely affected by domestic abuse and the steps they had to take to protect themselves.

4.2 Leaving an abusive partner

As other studies have shown, leaving an abusive partner can be difficult and dangerous (e.g. Brownridge, 2006). Many (13) of the women in the study had made previous attempts to leave but had returned to live with their partner. Women gave many reasons for returning, including the influence of their children and being persuaded and coerced by their partner. As described later in *Chapter Six* the majority of children became homeless following parental separation. Some women’s decisions to return were influenced by their children’s desire to return to their old house and to their old school. Women in particular described difficulties often associated with living in a refuge. For instance, they highlighted problems with communal living that required sharing living space with other families and described feeling isolated. A few (3) women’s decisions to return were influenced by their children missing their father. This is exemplified in the quotation from Suzanne’s interview below. In her interview, she described the strong feelings she held towards her father. In the extract below she describes how her distress about her parents’ separation was crucial in her mother’s decision to return:

Yeah well we had ran away a few time before that to refuge. But we went back cos I was too young to understand at the time and then I used to just sit and cry and my mum used to just go back for me.

Women often reported that their partners had persuaded them to return after an initial period of separation. Men convinced women that they had ‘changed’: that they were no longer abusive. In these cases women said men had managed to contain their abuse immediately after women and children had returned. However this change in his behaviour was temporary and after a short while men returned to being abusive. There were also examples where women had been coerced to stay or to return. For instance, some men threatened to commit suicide and others told women that they would lose their children if they left them.

There were cases where coercion involved overtly manipulating children. In Lydia’s case, she had managed to pack her and her children’s things before she was prevented from leaving. Her husband did not need to use physical force to stop her and the children leaving. Instead he used the children’s affection towards their pets as a means to coerce them to stay. Her quote below demonstrates how even when women have made a decision to leave, their abusive partner may coerce them to stay:

So we managed to pack bags and all that, but then he says he will get the dogs put down if I leave. And then the kids were in tears, so I put the bags back.

As highlighted in the review of literature, the presence of children is reported as a risk factor for continued abuse. Since separating, many women described how domestic abuse had not ended and often centred on contact arrangements. These experiences are further examined in *Chapter Eight*. However, at this point it is worth reflecting briefly on women’s perceptions of risk following separation, particularly as this is something that the legislation for disputed child contact is concerned with. Some women believed that their partner continued to pose a serious risk to them and their children. There were a few (4) women who believed that the level of risk had increased. This notion that risk can escalate immediately after separation is discussed

in other research (e.g. Humphreys et al, 2003). Brownridge (2006) argues this stems from a perpetrator's belief that following separation they have lost control over their victim. Abuse following separation is interpreted as an attempt to regain control and the increase in severity interpreted as increased levels of desperation to retain this control. In the extract below, Emma reflects on the risk she perceives her husband to pose since their separation:

..if he got me on my own, or I don't know, it would be more extreme, it would be more definite and...just, I am under no illusions that he would kill me. I know he would. He nearly did it twice, so I am absolutely under no illusions there.

Emma's quotation is stark. It reveals how serious domestic abuse can be for some women. Before separation, her husband had almost killed her twice. Her repetition of 'under no illusions' draws attention to how acutely aware she is of what her husband is capable of and how serious it would be if he had the opportunity to attack her again.

5 Children's exposure to domestic abuse

Chapter three showed that children are directly and indirectly affected by domestic abuse (see Stanley, 2011 for overview). Children are often intimate witnesses to the abuse that their mothers are subjected to. They may overhear domestic abuse, it may take place in their presence, and they may witness its aftermath. Children often act to protect their mothers during attacks. They may intervene or seek assistance in a bid to stop the abuse. Children can become a focus for the perpetrator's abuse. Perpetrators may target the mother-child relationship and attempt to undermine this. Children may be encouraged to participate in abuse. Research like Edleson (1999), highlights a correlation between domestic abuse and the direct abuse of children by fathers. This section reflects on how children in this study were exposed to domestic abuse.

5.1 Pregnancy

The relationship between pregnancy and domestic abuse is complex. For some women pregnancy offers protection from abuse (Bowen et al, 2005) for others it may be a particular time of vulnerability (Lewis, 2005). Kelly (1994) categorises domestic abuse in pregnancy as ‘doubly-intentional’; as it is both an attack on the mother and an attack on the unborn child. Several women reported that they were subject to assaults during pregnancy. All of the women who spoke about being assaulted while pregnant reported that domestic abuse had started before they had become pregnant:

...he come back to the door at all hours of the morning, and I wouldn't let him in, and I was sitting on the stairs crying, because he's battering at the door. So I phoned the police that time because I was so scared, because I was 6 months pregnant, because I knew if I let him in, he was going to beat me up again. Although he didn't really hit me very hard. Maybe once or twice when I was pregnant.

(Freya)

Freya's narrative gives testament to the fear domestic abuse engenders. She did not let her husband into their house because she was fearful of what he might do. Previous attacks meant that she was aware of the violence that her husband was capable of. Freya reflects that being pregnant did not stop her husband from attacking her although her comment “he didn't really hit me very hard” and “maybe once or twice” suggested that in her experience pregnancy limited the frequency and severity of attacks. Later in her interview, Freya explains that experiencing abuse whilst pregnant amplifies the impact that abuse has. Being assaulted whilst pregnant leaves women with the physical and emotional impact of being assaulted by a partner as well as the fear about the impact an assault may have on their unborn child.

5.2 Witnessing domestic abuse

Research has shown that children are aware of domestic abuse, and at times intimate witnesses to it. As discussed in *Chapter Three*, Stanley et al's (2011) research demonstrates this with findings on domestic violence notifications made by the police to children's services. This research also found that children were direct

witnesses to the abuse carried out. All of the mothers provided examples of how their children witnessed both abuse and the aftermath of abuse. The extract from Emma's interview highlights how both her young children witnessed attacks made by her husband.

There was times, I remember locking myself in the bathroom and his dad kicking the door down, and Luke is standing behind him. Me screaming, and Luke [son] standing in the hall. I remember Julie [daughter], she was only about a year old, she was in the cot at the bottom of the bed, standing screaming, and her dad was pulling me round the bedroom by the hair.

Children's close proximity to attacks carried out on their mothers was common across the research. In this study, women reported that children had witnessed physical, sexual and emotional abuse. Josh, for example, witnessed his father attempt to strangle his mother. In the extract below, his mother describes this and the role he played in protecting her:

He put his hands on my neck all the time. Everything, little silly things, and you refused to do it and he was straight away for the hand on your neck and he will choke..... The day that my, he tried to strangle me, I [was] breaking free... Actually, Josh phoned the 999, and speak on [the phone to] the operator.

(Alice)

As highlighted in other extracts Alice refers to this assault as one of many. She describes how her husband would often try to choke her for refusing to do "silly little things". It seemed like whenever she did not follow his demands, his first response was to choke or threaten to choke. Josh lived in an environment where serious physical violence was his father's first response. On this occasion, Alice's son intervened in his father's abuse and sought help by calling the emergency services. This in turn signalled the end of Alice and her husband's relationship. It shows the protective role that children can play as well as how they are exposed to domestic abuse. This is supported by findings from research by Mullender et al (2002) and Edelson et al (2003).

Children also provided examples of the physical assaults they had witnessed. In the extract below, Jacqueline remembers an occasion where her father had been drunk, and had assaulted her mother in front of her, her siblings and her brother's friend:

I mind, he was drunk one day and my mum was in her bed and like we were all in the living room, me and my brother and my brother's friend. And he came in and he switched the TV off and shouted at us, and then he dragged my mum out of bed by her hair.

From Jacqueline's perspective, there did not appear to be any context or events that led to the incident. It was just something that had happened. During the interview Jacqueline described this incident in a quiet and dispassionate way. This seemed to be the opposite of what witnessing that incident would be like. For instance the levels of noise and Jacqueline's feelings when she witnessed her mother dragged by the hair from bed.

As outlined earlier in *Chapter Three*, authors like Jaffe et al (1990) and McGee (2000) argue that witnessing any domestic abuse is tantamount to the emotional abuse of children. As already discussed, children witnessed domestic abuse that took place. Some children were also encouraged to participate in their father's emotional abuse of their mothers. In the extract below, Nicola describes how she suffered depression, which often left her exhausted and at times unable to leave bed. Her husband used the symptoms of her depression as opportunities to berate her, often in front of her children:

With the depression I would sleep a lot, and there were days when I couldn't get out of my bed, and that would be another, just something for him, he would come in and if I was in bed, and I mean, for the life of me, when I was like that there was no way I could get out of bed. And then it would be, oh she's a lazy bitch, there she is lying in her bed again. Some mother she is to youse. Look girls, there she is. She not bothered about us, she's not bothered about anybody, there she's just lying in her bed, just thinking of herself. And it's, aye, I suppose we'll have to get on with everything.And there would be times he would, I think, three times, he would come in and he would throw tablets at me and say, there, take them and give us all peace.

In this extract, Nicola's husband purposefully engages his children in emotional abuse of their mother. He verbally abuses Nicola calling her a "lazy bitch" in front of their children. His insults have the intention of convincing the children that their mother is a "bad mother". His suggestion that Nicola should commit suicide to "give us all peace", implies that he and the children would be better without Nicola in their lives. The verbal and emotional abuse that Nicola's husband carried out has the intention of encouraging the children to question the relationship they have with their mother and ultimately damage it. This is an overt example of abuse that Humphreys et al (2006) describe as an attack on the mother-child relationship.

Three of the women reported that their children had witnessed or overheard them being raped by their partner. The close proximity of children when women were raped affected how women reacted and resisted rape. Women described not wanting to make any noise as it might upset or frighten their children. In the extract below, Annabelle reflects on the sexual violence that she was subject to:

But, they must have heard more than they have seen to be honest. It did get to the stage that, you know, he doesn't consider it rape or anything, but you know, when you don't fight back, you don't want it, but you have lost the fight, I did get to that stage, that he could do anything to me and I wouldn't make a sound.

Her account reveals that her husband repeatedly raped her. She describes how her husband did not consider forcing her to have sex with him as rape. She infers that her previous attempts to "fight" against forced sex had been unsuccessful. Her phrase "he could do anything to me and I wouldn't make a sound" underlines how relentless domestic abuse is. As Humphreys et al (2008) note, this sort of sexual abuse is a 'disturbing violation of the boundaries which seriously distorts the environment that mothering occurs (not to mention fathering)'.

5.3 Intervening to protect their mother

As described earlier in this chapter, some children played active roles in protecting their mother during attacks by their father. For instance Josh phoned the emergency services when his father tried to strangle his mother. Four children had also provided

witness statements to the police after specific incidents. In many cases, children had also physically intervened to stop their father from attacking their mother. An example of this is given in the extract from Pamela's interview:

They were, in their wee heads they were protecting me. They were getting in the way of the kind of argument and I was putting them in the room and telling them to stay there and that'll be fine. But they were actually getting in the middle of the argument. They were protecting me because their father was going for me and whatnot and they were just two innocent children in the middle. Both of them were like that.

This again shows how children become involved in the domestic abuse that takes place in their family. Despite Pamela's efforts to remove the children from the room where her husband was, the children came back and tried to protect their mother. Both children tried to intervene physically and stop their father from "going for" their mother.

5.4 Being abused directly

As noted in *Chapter Four*, research shows a correlation between domestic abuse and the direct abuse of children. Edleson's (1999) review of 35 US studies identifies an overlap between child maltreatment and adult domestic violence. His analysis found between one third and one half of children exposed to domestic violence were also direct victims of physical abuse. In this study, two mothers expressed concerns about children being sexually abused. These concerns had been investigated by social work and were found to be without basis. In five families, either mothers or children described a child being physically abused by their fathers before separation. In one of these cases this had been when a child had intervened to protect their mother and the father then went on to attack the child. In the other cases, the assaults seemed to be connected to fathers' responses to children's behaviour. However as the following extracts reveal, these were assaults and not examples of corporal punishment:

Once when, apparently I did something and he just like choked me. And mum used to protect me when she came through. And my mum would get more hurt.

(Leo)

Fiona: And you said that he used to hit you, what kind of things, what would happen?

Michelle: He'd just like smack us anywhere, really. And one time Jacqueline [sister], I can't remember what was happening, Jacqueline was on the floor and he like started booting her in the stomach and that.

Fiona: Oh, that sounds really scary. What happened afterwards?

Michelle: I can't remember. I don't know. He was in a real angry mood that day.

These examples show the serious violence that some fathers perpetrate against their children. Leo's example also shows how mothers may attempt to protect their children from abuse; and how such attempts may provoke further abuse of mothers. Michelle's example shows that in some families, violence towards children was routine and unremarkable. These correspond with Bancroft and Silverman's (2002) findings about the parenting of men who perpetrate domestic abuse, especially findings on the authoritative parenting style of abusive men.

6 Conclusion

This chapter highlights what domestic abuse is and how it affects the lives of women and children. Many of the findings correspond with those of existing research on domestic abuse. They also confirm ideas feminist ideas about how domestic abuse is conceptualised, illustrating that it is on going and has cumulative effects (e.g. Stark, 2007).

The research found that women might not always identify as having experience of or a victim of domestic abuse. Whilst living with abuse, women may try to disconnect or 'switch off' from it, as a means of coping. Distance from an abusive partner provides time to make sense of abuse. It also provides time to assess the seriousness of the abuse they were subjected and the implications this may have for post separation arrangements like contact. All women who participated in this study had support from a domestic abuse service. Many had lived in refuges, which provided a

safe place to live where they were protected from abuse. These supports may have assisted women to reflect on their experience, to develop language to talk about their experiences, and to name them as ‘domestic abuse’.

This raises questions about how women might engage with solicitors and discuss concerns they have about contact that are connected to domestic abuse. Women might not necessarily use this language or connect concerns about contact and domestic abuse in such an outright way. This becomes even more pressing when we consider that the majority of women who experience domestic abuse do not access refuge or other forms of domestic abuse support.

Women’s accounts reveal how abuse has the strategic effect of controlling and constraining their and their children’s everyday lives. It affects relationships that women and children have with friends and wider family. Men’s abusive behaviour permeated many aspects of women’s and children’s lives. Fear about abuse was both chronic and acute. Women described being frightened on specific occasions, but also being constantly vigilant to changes in men’s mood that could signal an escalation of abuse. Both women’s dependence on men and the dynamics of abuse in an intimate relationship influence whether and how women respond to ‘helping’ agencies like social work and the police.

Much of domestic abuse occurs outwith the gaze of professionals. Men are not arrested, charged and do not receive convictions for all of the domestic abuse that takes place. It is questionable whether the convictions they receive reflect the seriousness of their actions. For example, Sophie’s husband was convicted with a domestic breach of the peace after threatening to kill her. Women may not support and may in fact resist agencies like police and social work becoming involved in their families. This raises questions for how domestic abuse can be evidenced or proved to be an issue in disputes about contact.

The chapter demonstrates how children are exposed to domestic abuse as well as the pervasive effects it has. Mothers slept with children in order to limit the violence and abuse that they were subjected to. Children spent time in their bedrooms or at their friends so as to avoid their fathers. When abuse escalated, children and mothers fled their home in order to be safe. Children were intimate witnesses to domestic abuse. They witnessed attacks on their mothers. Some children were also targets for their fathers' abuse. As Mullender et al (2002) report, children are not passive in domestic abuse. Some fathers sought to involve their children in abuse. They encouraged children to participate in the degradation of their mothers. Like other research, some children in this study intervened during their fathers' attacks on their mothers. Children physically intervened during assaults and sought assistance from the emergency services and neighbours. Children's views, behaviour and feelings were also influential in women's decisions to end or to remain in relationships with abusive men.

While these findings on domestic abuse and children's exposure to it are not new, they do set an important context for the subsequent chapters that examine children's experiences of contact post separation. The next findings chapter looks closely at children's views of contact when there is domestic abuse.

Children's views of contact with their fathers when there is domestic abuse

1 Introduction

As the discussion in *Chapter Three* shows, the literature on children's own experiences of domestic abuse has developed in recent years. However, there is limited research on the relationship between children and abusive fathers. This gap becomes particularly significant when we consider the issue of child contact when there is domestic abuse. Brownridge's (2006) review of the divorce literature concludes that the presence of children is a risk factor for post-separation abuse. Research by Radford and Hester (2006) and Stanley et al (2010) highlight that contact can provide opportunities for further abuse to take place. Radford and Hester (2006) also report that men use legal disputes about contact to maintain an unwelcome presence in the lives of women and perhaps children. These studies have sharpened the focus on the risks that contact with an abusive father can pose to a child as well as the non-abusing parent.

These studies have largely relied on the accounts of adults. Children's own views and experiences of contact have been under researched. The Scottish legal framework that places importance on taking and giving weight to the views of the child makes this research gap more pressing.

Research by Peled (1998), Mullender et al (2002), Aris et al (2002), Eriksson and Näsman (2008) and Thiara and Gill (2012) and Holt (2013) have begun to provide some insight into children's views about contact. As discussed in *Chapter three*, these studies have reported on the complex and contradictory feelings that children

have about their father. Peled (1998) found that children struggled to accommodate their fathers' abuse with the ideal of a father. The existing research has also examined what children perceive to be their fathers motivation for contact (e.g. Mullender et al, 2002; Thiara and Gill, 2012; and Holt, 2013). They have found that it matters to children whether they considered that their fathers were able to 'change' and stop being abusive and whether contact was an example of him exercising control or care. Unsurprisingly, whether children wanted a continued relationship with their father depended on their feelings towards him (e.g. Mullernder et al, 2002). Those who described hating or feeling scared of their father did not want contact. For other children the relationship between their feelings and desire to have contact was more complex. They described feeling relieved that they no longer lived with their father, and that they disliked their father but did not want to 'lose touch'.

The literature review identified a number of gaps that this findings chapter aims to address. To date the literature has had somewhat of a narrow focus, it has not fully examined the broader context in which children's views are expressed. For instance what impact might contact have on children's wider social relationships and how do the circumstances surrounding parental separation affect children's views about contact. These are areas that have been somewhat neglected in the existing literature. The aim of this chapter is to provide information that contributes to understanding about the way children view contact in the context of domestic abuse. It reflects on the complexities of children's relationships with their fathers following parental separation in an atmosphere of domestic abuse. It discusses the influence that domestic abuse can have on children's views and what implications this might have for how their views are understood and treated. The chapter also explores issues other than domestic abuse that children identified as important for their views of contact. It discusses how changes to children's everyday lives following their parents' separation also influence the views children have about contact with their fathers.

2 Children's views about contact

As was the case in other research, the children interviewed in this study held diverse views about contact. In this study they were shaped by their own unique circumstances, relationships and personalities. Some children (5) were positive about contact. They looked forward to and enjoyed spending time with their father. Others were more ambivalent about contact. Some children (5) did not articulate a strong view about contact, while others, despite expressing problems with contact, wanted contact to continue. There were children who were negative about the contact they had with their father. It was something that caused these children distress. For some children (4) these feelings of distress were compounded because contact had been court ordered and was contrary to their wishes. These children constructed contact as being forced rather than desired. There were a few (4) children who had no contact with their fathers. Even when this was in accordance with their wishes, the relationships between children and fathers remained a difficult issue for them. These relationships evoked sadness and at times upset amongst children.

2.1 The influence of domestic abuse

Domestic abuse and its continued impact on children and mothers was a core concern for many of the children. For some children the far-reaching effects of domestic abuse permeated all of their views and feelings about contact. Many of the children's views were dynamic. They shifted and changed with time and following specific events. Children identified some issues as having more salience than others at particular points in time.

The children in the study were all aware that domestic abuse had taken place in their families. They provided examples of abuse that had taken place before separation. Some also provided examples of abuse that had taken place since their parents' separation. These are addressed in *Chapter Eight*. However the nature of domestic abuse or the extent of children's exposure did not necessarily affect children's views on contact in uniform ways. Domestic abuse was central to the views that some children held about contact. They referred to their fathers' both current and historical

behaviour to explain why contact with their father was problematic, and unwanted in some cases. However, in some cases, domestic abuse did not necessarily prevent children desiring to have contact with their father. In a few (4) of these cases, how children understood domestic abuse and the reasons for their parents' separation appeared to be influential in their views in favour of contact.

2.2 Domestic abuse: a core issue

Some (4) children's views of contact were starkly influenced by their experience of domestic abuse. It was a core issue when they discussed their views. In Lisa's case, she was adamant in her views that she did not want contact with her father. She drew direct connections between her views and her father's abusive behaviour. In the extract below she provides a list of 'bad things' that her father has done and relates these to why she does not want any contact with him:

Lisa: I just think with all the bad stuff he has done, I don't want to see him at all.

Fiona: What bad stuff?

Lisa: Well he's got drunk; he's bent my finger back and stuff. He's smashed one of those windows. He's spat in my mum's face and stuff. '

This quotation exemplifies how abuse directed towards children, as well as abuse directed towards mothers, may affect views that children have about contact and the relationships they want to have with their fathers. Lisa identifies her father's abusive behaviour towards both her and her mother as reasons why she does not want to have any contact with him. This highlights how enmeshed the interests of children and women can become in contact disputes when there is domestic abuse. When forming views about contact, children may consider their own and their mother's experiences.

Despite Victoria's strong feelings against contact, she maintained that she loved her father. In the extract below she describes that while she may love her father, his behaviour complicates the relationship that she has with him:

Victoria: But it's not that I don't love my dad, it's just that with all the bad stuff it's hard to trust him and stuff.

Victoria's father's behaviour has meant that she finds it difficult to trust him. This has serious implications for the relationship and contact she wants with him. Victoria's words "it's not that I don't love my dad.." indicate that despite the abuse he has carried out, she continues to have some sort of attachment or bond with him. This idea was repeated in other interviews with children. For example, when Ross reflecting on his father's behaviour and his feelings towards his father, he comments that: "I find it difficult to say I hate him because he is my dad". These findings resonate with those of Peled (1998) and Holt (2013) in their discussion about the contradictory feelings that children have about fathers in who have perpetrated domestic abuse against their mother.. Another interpretation is that these are examples of narratives that children have developed and use to talk about their father. Children may well want to be *seen* to love their father and to not hate him. Children might consider this to be a more palatable narrative to use about their father than others.

Interviews with the minority of children who did not have contact with their father revealed similar issues. Even when courts had been made orders for no contact that accorded with children's wishes, some (2 of 4) children still missed their father and were sad about the relationship they had with him. Children's attachments to their father were not simply 'switched off' because of domestic abuse or their views against contact. For example in Lisa's case, the court had ordered no contact between her and her father. This coincided with the views she expressed to the court reporter about contact. However, her sibling continued to have contact with Lisa's father. Jane (the mother) described how Lisa was upset that her father had not shown any interest in her since the order of no contact. This had come to a head when her father had gone to her sibling's school to find out how about his progress, but had not visited Lisa's school to find out about her progress. Her mother thought that this was interpreted by Lisa as proof that her father did not care about her, which caused the

child upset and distress. It is important to highlight that this was not something that the child identified during her interview.

Some women identified children's feelings of rejection that stemmed from their father's abuse as key to children's views about contact. They described particular incidents, where as part of abuse, fathers deliberately and openly rejected children. For example, before Hannah's parents separated, she often overheard her father tell her mother (Lucy) to leave and take Hannah and one of her siblings with her, as is noted in the extract below:

Lucy: Well she heard the conversation...well they all heard the conversations about 'go and get another house' or 'go and pack your bags', 'just go and go' or 'leave us alone'. So she picked up on all of that, she picked up on her brother saying it as well.

Hannah's mother highlights how, as part of domestic abuse, fathers may reject children. This is supported in other research on children and domestic abuse, and developed as a particular component of Holden's (2003) taxonomy of children's exposure to domestic abuse. Hannah's brother was also encouraged by his father to 'join in' with this sort of abuse and say similar things to Hannah and their mother. The idea that children may be encouraged to participate in abuse is addressed in other research (e.g. Mullender et al 2002). From Hannah's mother's perspective, the explicit rejection from both her father and her brother had significant influence on Hannah's views against contact with her father.

In some cases children's feelings of rejection related to the contact that took place. This occurred when fathers did not attend arranged contact visits. Children's views against contact hardened after being disappointed when their father failed to 'turn up' for contact. Some children also viewed their fathers' interest in contact as being motivated by his interest in their mothers rather any interest in children. This often led to a negative shift in children's feelings towards contact. These experiences demonstrate how the explicit rejection of children or children's perception that their fathers have rejected them, can affect children's views about contact. It also

highlights how children's views can change over time, in the aftermath of particular events or as children's perceptions of the quality of relationship they have with their father and his motivations for contact evolve.

Children were often concerned with how their father might conduct himself during contact. They described feeling worried and nervous that he might be angry. Children made connections between their fathers' anger and his reaction to parental separation. Such anxieties are a significant concern, especially in light of research on the role women play in protecting children from domestic abuse, and the correlation between separation and escalations in abuse and risk (e.g. Humphreys, 2003 and Richards, 2004). Children's concerns about their fathers exist in a context where mothers' absence from contact diminishes the role they can play in protecting children at potentially one of the most dangerous times.

The impact domestic abuse can have on children's views about contact was explored during an interview with John. He explained that while he wanted contact with his father, this was only the case if he could be reassured that "he wasn't in one of his moods". This was said after John had listed several occasions where he had witnessed or been a direct victim of her father's domestic abuse. The examples he gave included witnessing an assault on her mother whilst she was heavily pregnant; the setting fire to a sofa when he and the rest of her family were at home; and being forced with his mother and his siblings from a car in a remote area, and being left without any means to get home. These were all examples and evidence of what his father was capable of if he was in "one of his moods". John's views on contact were influenced by whether her father's mood or abuse could be contained during contact. The notion of wanting contact if their father's behaviour could be controlled was raised in interviews with a number of children.

These views highlight that domestic abuse can be a core to how children view contact with their father. Domestic abuse requires children to make complex negotiations when forming views about contact. Children make subtle distinctions

and connections between their fathers' behaviour and their feelings about contact. Both Hannah's and John's account show the significance domestic abuse has on some children's views about contact. Domestic abuse in and of itself can affect whether children want to have a continued relationship with their father or not. Children may find their father's behaviour so difficult and frightening that they do not want contact with him. The act of domestic abuse involves children both directly and indirectly. From this children may feel rejected by their father and dissuaded from contact with him. If children do want contact with their fathers, domestic abuse can affect the conditions that children think are necessary for this relationship to continue.

Even when children do not want contact with their father they may still continue to have or feel attachments to him. Children who do not want contact state that this does not necessarily mean that they do not love their father or that they hate him. Being against contact does not protect children from being upset or distressed by the quality of the relationship that they have with their father, or by their perceptions of how their father feels about them. Children's perceptions of what their fathers' motivations are for contact affect children's view about contact.

2.3 Wanting contact despite domestic abuse

Children who want contact with fathers in the context of domestic abuse are largely overlooked in the literature. Debates tend to focus on the risks posed by contact or on children whose views about contact are ignored and who are forced to have unwanted contact with their father. However, in this research there were also children who were ambivalent about contact and children who wanted contact with their father. The extent of abuse witnessed or suffered by children did not always neatly predict whether a child wanted contact to take place or not. There were children who had witnessed serious assaults on their mothers and who were less cautious about contact with their father than Hannah and John had been. The ways that some of these children understood domestic abuse and the reasons for their

parents' separation perhaps extended some influence over how they viewed their father and their contact with him.

Maria for example, had witnessed sustained and severe domestic abuse. Her desire for contact appeared to somewhat conflict with her experience of abuse. In my interview with Helen, Maria's mother she described a serious assault carried out by Maria's father before they separated:

I had been handed a letter. He had found a cobweb. I'd been handed a letter about how lazy I was. He had left a note for me to read. So I was...you just know when he was about to start. I had actually went and sat on the front doorstep. And I thought at least I am on the doorstep, at least if anybody sees me I'll be ok. And I just ignored him. I was sitting there with Maria on the doorstep beside me and he was going on about how lazy I was. And I just thought don't say anything. And he just come and got me from the back and dragged me through the whole house and Maria was out there screaming. And he had his hand over my mouth and you know what? There just comes a point when enough is enough.

Helen's account makes clear that Maria witnessed verbal abuse and extreme violence at close proximity. It was also clear that Maria was distressed and upset by her father's assault on her mother. During my interview with Maria she talked about this very same incident. Maria recounted how she felt 'panicky' and had to 'crawl through to my neighbour' to ask them to call the police whilst the attack was taking place. On this occasion Maria provided a witness statement against her father to the police. During our interview, Maria explained that this had not the first time she had to call the police because of her father's violence. Even though Maria had witnessed her father's abuse over an extended period, and, had on several occasions played a pivotal role in protecting her mother from her father's violence, Maria continued to want contact with him.

Mullender et al (2002) show that in cases of domestic abuse, many children are able to discern between who is responsible for carrying out abuse and who is not. However in Maria's case, despite giving evidence to the police about the attack, who

she believed to be responsible for domestic abuse seemed less obvious as shown in following extract from her interview:

Maria: Yeah but em it wasn't all my dad's fault do you know what I mean? He reacted and that blew it up.

Fiona: So who was being violent to who?

Maria: My dad to my mum, but em, fair enough my dad shouldn't have done that eh, but em, at the same time my mum used to sort of wind everyone up with the way that she acted. Do you know what I mean?

Maria appears to equalise responsibility for the abuse between both her mother and father. While she identifies her father as being violent towards her mother, she attempts to rationalise his violence by implying that her mother provoked her father. This blurs responsibility for the abuse and perhaps allows Maria to excuse her father for the assaults he carried out. It was not clear what led Maria to this conclusion. However it mirrors how victims rationalize domestic abuse (e.g. Pain, 2012) and resembles reasons used by perpetrators of domestic abuse to legitimise or minimise the abuse they carry out (e.g. Harne, 2004). It also supports Peled's (1998) findings that children struggle to accommodate the contradictory sides of their fathers.

Maria and Helen's accounts reveal different views and analysis of domestic abuse. Helen describes the attempts she made to reduce the severity of her husband's attack. In her earlier quote she talks about anticipating that an attack was about to take place. In sensing that he was "about to start", she went outside the family home hoping this would increase the chance someone would witness any attack. She hoped that this would mean that her husband might control or limit his violence if someone witnessed it, or that someone might intervene to stop the violence and seek help. Helen chose not to respond to her husband's allegations that she was lazy. Instead she was quiet, hoping that by not responding or reacting she would not antagonise him and therefore limit his violence. From Helen's perspective, her actions were deliberate and intended to minimise the abuse on this occasion. In contrast, Maria thought there were mitigating circumstances that led to her father's violence. She

believed not only was her mother was in some way responsible for the domestic abuse she was subjected to, but that she had “wound up” he father, thus making a provocative contribution to the abuse. Her positive view towards contact with her father appeared to follow her analysis of the domestic abuse she had witnessed.

These notions about parental responsibility for abuse, reasons why their parents had separated and who was responsible for parental separation were important also for other children. These highlighted that children’s views are formed from their own subjective interpretations of the dynamics of abuse and circumstances of parental separation.

This is further evidenced by the case of Michael. When asked what could be done to improve contact, he replied that both her parents should write a letter to one another and apologise. From Michael’s perspective both parents were responsible for the separation and needed to make amends to one another. Ultimately Michael wanted his parents to reunite and saw an apology to one another as an important first step to achieve this.

Maria and Michael’s views illuminate that children may not always view their father as being solely responsible for the abuse or his behaviour as the overriding factor for parental separation. These views are somewhat contrary to dominant discourses about domestic abuse, where responsibility for abuse lies squarely with the perpetrator. How children understand these issues have important implications for how children views in contact disputes are contextualized. Parallels can perhaps be drawn between the questions ‘why doesn’t she just leave?’ and ‘why do they want a relationship with an abusive father?’ The loyalty that some children may have towards a father who is abusive is understandable when we consider Pain’s (2012) research on how fear operates in abusive relationships and victims become entrapped in them. Stark (2007: 115) argues that women do not choose to stay with an abusive partner; rather that there is not ‘sufficient volitional space between abusive incidents to exercise decisional autonomy.’ Relentless abuse undermines and erodes women’s

autonomy, rendering staying with an abusive partner not as a choice that is made but simply a reality. The pervasive nature of domestic abuse can distort understandings of responsibility for abuse and influence children's views about contact. At the very least these complicate children's views and how they exercise decisional autonomy. Of course, there is an alternative narrative that children's views are simply an expression of how they feel.

These ideas can present real challenges to children's rights to express views and the weight that is given to them. There is danger they may contribute to a simplistic construction of children, with those who want contact with an abusive father viewed as only doing so because their views have been manipulated and subsumed by fathers' dominance and abuse. This may well be an accurate depiction for some children. However, there are risks in framing all positive views about contact as merely products of fathers' manipulation. It erodes the integrity of children's rights and ignores the strength of some views. It also provides little direction on how contact decisions should be made for children who hold views like these.

2.4 Having similar experiences of domestic abuse but different views

Another interesting example of the differences in children's views related to twin brothers, Harry and Toby. Their experiences show how views on contact are not always easily predicted by children's own experiences of abuse. Following their parents separation, these brothers both wanted and had regular contact with their father as did their younger siblings. However a recent assault on Harry by their father during a contact visit led to divergence in their views. In the extract below, Harry describes the assault that took place:

‘..one night when we were there we got a DVD and I think I stood behind a couch and he lifted me up and throwed me on the couch and hut³⁹ me’
(*Harry points to his head to show that was where he was hit*)

³⁹ ‘Hut’ is a colloquism that has the same meaning as the word ‘hit’.

This assault took place after Harry told his father that he wanted to go home. At the time of interview criminal proceedings for the assault were about to commence and the court order for contact was not enforced. Since witnessing the assault on his brother, Toby no longer wanted contact with his father. He explained that he was scared that his father “would go for one of us again and hit us”. However Harry (the victim of the assault) wanted contact to continue under specific circumstances, such as if contact was shorter, and if he and his father were to spend contact doing a particular activity rather than spending time at his father’s house. Harry saw these conditions for contact as strategies to limit the potential for their father to undertake further assaults.

Divergence in the brothers’ views about contact shows that abuse affects children’s views about contact in different ways. Witnessing the assault led Toby to conclude that continued contact with his father to be too dangerous. However, Harry wanted contact to continue if it were under more controlled circumstances. Harry and Toby did not explain their different reactions to abuse. However their mother suggested the difference stemmed from their different personalities and temperaments. She thought that as Toby was quiet and shy, the assault on his brother had frightened him. However Harry’s outgoing and confident personality meant the incident had not dissuaded him from wanting contact.

During interview, the boys’ mother spoke about how the assault had affected her views about contact. Her first response was that all contact should stop. However in the event that contact was continued for any of the children, she wanted all of her children to have contact and for this contact to take place at the same time. On the surface this appeared to run counter to the children’s interests. Why would she want contact for the child who had expressed views against contact or the child who had been assaulted? She explained that if the older boys were to continue contact, it would mean that they could protect the younger children. She also thought that Toby who had witnessed the assault would be more likely to tell her about any problems with contact than Harry. This echoes Stark’s concept of the ‘battered mother’s

dilemma'. This is when women behave in ways that may appear contrary to their children's interests, but in fact are examples of women trying to exert some form of control when they have no control.

3 Changes to children's lives

There was a range of issues separate to domestic abuse that affected how children viewed contact with their fathers. These were connected to the changes in children's lives that had followed parental separation. In all cases, parental separation not only signalled changes to the relationships that children had with their fathers but also other important changes to other aspects of their lives. In some cases these changes were exacerbated because parental separation had occurred in the context of domestic abuse. Other changes were ones that other children who experience parental separation may also be familiar with. This section examines the aspects of children's lives that changed following separation and how they influenced children's views about contact with their fathers.

3.1 Leaving the family home

The vast majority of children had left the family home when their parents had separated. There were only three cases where children had remained living in their home following the separation. In all of the other cases children and women had become homeless. Many (10) of these children had moved to a refuge. A few (3) of these children had had to move to several different refuges. This was because their father had discovered the refuge location and had made new threats to their mothers. There were other children who had lived with family members until issues concerning accommodation had been resolved.

As Stafford et al (2007) report, children's homelessness as a consequence of domestic abuse meant that children often moved to an unfamiliar area. They had to change schools, leave friends, pets and possessions behind. For some children this was not the first time that their parents had separated or the first time they had

become homeless. While these significant disturbances were features of children and women's lives, the majority of men continued to live in the family home. This meant that contact with a father was also a means for children to re-connect with their lives that had existed pre-separation. In Jacqueline and Michelle's case, they had to move to a refuge when their parents' relationship had ended. They were unable to take their pet dog with them to the refuge (it is typical for refuges to not accommodate pets). During their separate interviews, they both described how they only had contact with their father so that they could spend time with their dog:

Fiona: So like contact now, are there things you like about contact?

Jacqueline: I just like seeing my dog.

Fiona: And are there things you dislike about it?

Jacqueline: Seeing him (dad).

Michelle: But the only reason I'd ever go down is to see my dog.
Because I don't like my dad.

These experiences highlight how homelessness as direct result of domestic abuse presents particular difficulties for children. From their perspective these difficulties directly influenced their views about contact with her father. If their pet lived with them they would not choose to have contact with her father.

3.2 Siblings living apart

There were a number of children (6) in this study who had lived apart from a sibling since their parents' separation. In all of these cases the sibling was the eldest male child in the family. For these children, contact held significance beyond the

relationship they had with their father. Contact was not only an opportunity to spend time with their father but also an opportunity to spend time with a sibling.

Since Joanne's parents' separation, she and her younger brother lived with their mother and her elder brother Simon lived with their father. The extract below demonstrates that in Joanne's case contact was important, not only because it facilitated a continued relationship with his father, but because it also allowed her to spend time with her siblings.

Fiona: So the top 3 things that you like about staying at your dad's, what are they?

Joanne: Going outside to play football with Simon in the big massive back garden. And the other one is, going to the park to play football with dad and Simon

During our interview, Joanne spoke about a period of time where she had not had contact with her father or her brother Simon. Joanne said she did not know why contact had stopped but that it was something that had made her sad and upset. Joanne's mother described this disruption to contact as an example of their father "messing with their heads". As the study did not involve Joanne's father, it remains unclear what his reasons or motivations were. Regardless of these, Joanne's experience shows how parental contact can and does affect sibling relationships.

The idea that siblings living apart rely on parental contact taking place so they too can continue to have a relationship with one another was repeated in interviews with other children. In 4 of these 6 cases contact between children and non-resident fathers had ended as had any contact between their siblings and their mother. As well as disrupting the parent and child relationships (which in some cases was welcome), an unwelcome consequence of contact ending was that siblings' relationships were also disrupted. These disruptions to siblings' relationships were a source of distress and upset for some of the children concerned.

This importance of sibling relationships in children dealing and coping with divorce has been highlighted in the literature. For example, Sheehan et al.'s (2004) mixed method study with adolescents, reports that sibling relationships can protect children from the adverse affects of divorce and separation. They argue that siblings' relationships can provide consistency and certainty during a time where children are experiencing significant family change. As a result, siblings' access to one another is an important consideration when decisions are made about contact and residence.

3.3 Parents re-partnering

Difficulties that can arise for children as a result of parents re-partnering were often interwoven with children's views about contact. All but one of the cases where fathers had formed a new relationship, children viewed their fathers' new partners negatively. There was one child in the study who was very positive about her father having a new partner. Claire found that his new partner being at contact made contact easier. She was adamant that she did not want contact with her father but it had been court ordered. Claire found that she could relate to her father's new partner more easily than to her father, making contact less difficult.

Claire: I am actually quite glad he has her as a girlfriend because she is the one I have been able to talk to and she is the one who has stopped me going completely insane when I am with him when it will obviously never work.

Many children described feeling uneasy about their father's new relationship. In the extract below, Ross recalls the meeting he had with a Sheriff about contact with his father. Ross identifies his father's new girlfriend as one of the reasons that he does not want to have overnight contact with his father during that meeting.

Fiona: What questions did the Sheriff ask you?

Ross: Like why do you not want to stay at your dad's? And I said because I am not his girlfriend's number one fan.

In our interview Ross described how his father was always “hanging over his girlfriend”. These displays of physical intimacy left Ross feeling awkward and meant that he wanted to limit the time he spent with his father. Physical affection between fathers and new partners was difficult for children in other interviews. Suzanne, for example, describes how she felt jealous when her father had his arm around his girlfriend.

Suzanne ‘...my dad was putting an arm around another girl’s neck and I felt quite like jealous...I don’t know if that was for me to go back and tell my mum. Like mum: my dad’s got a new girlfriend!’

From our interview, it appeared troubling for Suzanne that she did not know that her father had a new partner until the contact visit where she met her. There was no opportunity for her to talk to her father or mother about his new relationship or become accustomed to the idea before she met her father’s new partner. The idea that children were confronted by new relationships during contact visits was repeated in other interviews. As well as showing how new relationships can affect children directly, Suzanne’s quote also exemplifies how new relationships in some cases were perceived as a way to hurt or taunt the other parent. She wonders if her father was affectionate towards his new girlfriend in the hope that she would tell her mother about his new relationship. As Suzanne’s father and mother did not speak to one another, the only way in which her mother would learn of her father’s new relationship was through Suzanne and the contact she has with her father. This meant that Suzanne had to choose between either telling her mother about her father’s new relationship or lying to her about what happened during contact with her father.

As well as adapting to their parent having a new partner, some children had to also adapt to their father becoming a stepfather to other children. In Paul and Ruby’s case, this has been something that they have found incredibly difficult, as their mother Sophie explains:

Sophie: The children haven't taken to the situation and it's not just her [new partner], it's the situation with the kids. They're jealous because they've never shared their dad with anybody. See if she had lived somewhere else the children wouldn't have had it rubbed in their face. They saw their dad changing. Then they saw their dad constantly being round there and playing with her kids.

Sophie highlights that children may feel that the re-partnering can mean that children feel they have to 'share' their parent with not only a new partner but also with new children. Paul and Ruby's father lived only a few streets away from his children with his new partner and her two children. Their close proximity meant that Paul and Ruby regularly saw their father outside of contact with his stepchildren. This presented a significant shift in the dynamic of the children's relationship with their father, where previously they were the only children in his life. Now they felt they had to share their father with stepchildren who he spent more time with.

This change fed into how they viewed contact with their father. During the interview they made it clear that they did not like their father's new partner or her children. This was exacerbated by the fact that when they had contact with their father, his new partner and her children were always present. Paul and Ruby resented this: they wanted to spend time with their father without his new partner or her children being present. In the quotation below, Sophie describes how Paul decided not to go on a contact visit because he did not want to go if his father's stepchildren were going to be there:

His Gran said to Paul see what you're missing? Your dad's taking the kids to the air show. You could've been going with them. Paul didn't want to go to the air show with her kids; he wanted to go to the air show with his dad.

These accounts highlight some of the difficulties that children can experience when parents' re-partnering includes an additional complication of stepchildren. The children saw the stepchildren as people they had to share their father with. They were jealous of the relationship and the time that he spent with them. They did not want to

spend time with his stepchildren and certainly did not want the contact they had with their father to include them. They saw the introduction of their father's stepchildren to their lives was an unwelcome one that negatively affected their views of contact. This raises questions about what children see as the purpose of contact. In law, contact is seen as a mechanism for children to have a continued relationship with a parent. Paul's and Ruby's views followed this. They constructed contact as a means for them to spend time with their father, not to become part of their father's new family.

3.4 Alcohol

The role that alcohol has in domestic abuse is contested in the literature. While research shows that violence and abuse may escalate with alcohol abuse, critics argue that it does not cause domestic abuse (Galvani, 2004). Several children identified their father's consumption of alcohol as a particular problem for the contact they had with their fathers. They were concerned about their fathers' drinking and the way that it affected their behaviour during contact. In the majority of these cases, women identified men's relationship with alcohol as a specific problem before the parental separation occurred.

When talking about his father, Luke said that: "He's drunk quite a lot of the time. So he's loopy." During our interviews, Luke gave examples of his father being drunk and behaving in ways that were unreasonable and frightening. He described being unsure whether his father had been drinking during his last contact visit:

Well the last time there was a rule about no drinking but I got shoved upstairs and he was downstairs. And he came up and I was playing the Xbox and he was like that over his girlfriend...so I don't know if he was drinking or not. So I'm not too sure.

From this extract we can appreciate that Luke's father's drinking has been so problematic that they have a rule that he would not drink during contact. The idea that Luke was "shoved" upstairs during contact gave Luke the impression that he was an imposition. He appears to suggest that his father wanted him out of the way.

His uncertainty over whether or not his father had been drinking illustrated the anxiety that children may have about contact when their father's drinking has been problematic.

Toby similarly identified his father's drinking as problematic for their contact. Toby has previously spoken with his father about his drinking, and this was something that his father seemed to be willing to address. However, as Toby's quote reveals, his father's drinking has escalated:

He said to me he'd stop drinking and that was like two or three years ago now and he's just got worse. He's been drink driving twice, well with the two wee ones. That's what I thought was bad about him.

Toby clearly cites his father's drink driving with his younger brothers as a reason for why he has a poor view of his father. His father's dangerous behaviour jeopardised the safety of his younger brothers amongst others.

In both these examples and in other cases in the study, alcohol was an additional complication for contact. Children were wary of their fathers, wondering whether they would be drunk during contact and what the repercussions of this might be. Galvani's (2006) research that reports alcohol has a direct relationship with the severity of abuse and violence supports these children's concerns about their fathers and alcohol.

3.5 Wider family

In addition to children's relationships with siblings, contact was also a means for children to continue relationships with their wider family. For some children, contact meant they were able to spend time with their wider family (including grandparents, aunts and uncles) as well as their father.

However, there were several cases where children's relationships with their extended family were jeopardised because of children's views and contact arrangements. Members of extended family became involved in disputes about contact, taking the side of the parent they were more closely related to. An example of this was given in interviews with Hannah and her mother, Lucy. Hannah's negative views about contact with her father has meant that she no longer has a relationship with her paternal grandmother. In the extract that follows, Hannah describes being on a bus and seeing her father and grandmother:

And then I seen my dad at the windae after my pal went away. And my dad says 'look' at my gran says 'look at that fucker' [directed to Hannah] and my dad said nothing.

At this point, Hannah and her father had not had contact and seeing her father had been a chance encounter. Rather than show warmth towards Hannah, her grandmother's response to seeing her was to call her a 'fucker'. It is striking that Hannah comments her father did not react to this and did not defend her. In my interview with Hannah's mother, she explained that her husband's family have taken sides since the separation. As part of this, the children that live with Lucy have been cast as being in opposition to their father and his family:

Lucy: ...in a way my man's family was trying to be on his side on...and sometimes it was like we were walking down the street they would get looks off their gran and their gran wouldn't talk to them. 'Ken? And I said this is not going to get better.

This shows how children's decisions about contact can have significant negative consequences for their relationships with their extended family. Another example is given in the extract below where Jane describes how her daughter Lisa did not feel she was able to have simultaneous relationships with her father and her maternal uncle:

Jane: I think she says to me, she was scared to see her dad too because her uncle, ken she is close to like, my brother, cos she thought, if I see my dad,

I'll not see my uncle, if I see my uncle, I'll not see my dad, something like that.

This stemmed from Jane's brother refusing to have a relationship with her whilst she lived with Lisa's father because of domestic abuse. This corresponds with research on how domestic abuse contributes to the loss of wider family networks and leads to victim's isolation. Once Jane and Lisa's father separated, Jane began to rebuild her relationship with her brother and her wider family. It was unclear whether Lisa's uncle would have chosen not to have a relationship with her whilst she had contact with her father but this was Jane's perception and this was something that Lisa was worried about. This meant that as well as weighing a range of other issues when coming to a view about contact with her father, she also had to include what she thought her uncle's reaction might be, as well what the consequences would be for her own and her mother's relationship with her uncle.

The idea that wider family members become involved in conflict between parents following the separation was common in the study. This had obvious implications for children and their views about contact. At times they not only had to navigate changing relationships with their father but also deteriorating relationships with members of their extended family.

4 Conclusion

The research findings reveal the diversity of children's views about contact with their fathers. This confirms findings from the existing research that was discussed in *Chapter Three*. Views are contextual; they are shaped by children's particular circumstances, relationships and personalities. There was also variation in the strength with which children express their views. Some children held and articulated strong views about contact, while others were more ambivalent and provided less resolute views about contact. *Chapter Two's* review of case law reports that the strength of a child's views influences the weight that they are accorded when the child's interests are taken into account. This therefore raises questions about how

courts deals with the views of children where views are less strongly held or articulated.

Domestic abuse was a core issue for many of the children. They drew connections between it and their views about contact with their fathers. Despite its salience in children's interviews, there was not a clear relationship between children's views about contact and the severity of abuse that children were exposed to. Views varied amongst children who had witnessed severe violence and children who had been directly abused by their fathers.

Some children who held negative views about contact and did not have any contact, also reported missing their father and feeling sad about the absence of a relationship with him. This highlights the contradictory feelings about fathers that children may have to accommodate and manage.

How children conceptualised or attributed responsibility for domestic abuse did not always correspond with their mothers' or with feminist perspectives on domestic abuse. Some children attempted to apportion responsibility between their parents and in some cases held their mothers responsible for the abuse that their fathers had carried out. This might be interpreted as a means by which children 'defend' what are perhaps unpopular views in favour of contact, or a way for children to accommodate the contradictory feelings that they have about their father and the relationship they want to have with him. Children's understanding of the reasons for their parents' separation also influenced how they viewed contact with their father. These findings all add texture to the current literature on child contact and domestic abuse. They also underline the need to contextualise children's views when making decisions about contact when there is domestic abuse.

Children considered and took account of the views, experiences and feelings of others when they formed views about contact. This echoes the findings of other research about child contact (e.g. Cashmore and Parkinson, 2006). The overlap between children's and mother's interests in circumstances of domestic abuse was

apparent in some of the children's accounts. They considered the impact abuse had on their mothers when they formed their views about contact. Some children also took account of their father's negative feelings about separation and saw contact as means to ameliorate these. As Holt (2013) found, a key consideration for children was connected to what they perceived as their fathers' motivations for contact to be. This related to whether children considered their father to be motivated by a desire to have a relationship with them or their mother. The reactions of children's wider family to parental separation and domestic abuse also influenced children's views about contact. For some children, preoccupations with how others might feel or react to their views about contact made expressing a view difficult. Some were so concerned about 'being fair' to both parents that they struggled to express a clear view as to what they wanted to happen with contact.

New to this research area are the findings about how contact held significance beyond the relationship they had with their father. It linked to other aspects of children's lives. The majority of children were made homeless as a result their parents' relationship ending. As well as adjusting to no longer living with their father, children also had to adjust to living somewhere different. As fathers tended to remain in the family home, contact often represented an opportunity to reconnect with familiar parts of children's lives. Parental separation also led to some siblings living apart. This meant the continuation of siblings' relationships relied on contact taking place.

Most children viewed fathers' new relationships and the impact these had on children's contact negatively. These new relationships were viewed as disturbances to or distractions from the contact that took place between them and their fathers. This was exacerbated when children were left with the responsibility of telling their mothers about them.

The findings underline the breadth of issues that children considered when discussing contact and the particular attention children paid to the impact that their views might have on others, and on their wider relationships. *Chapter Two*

highlighted that, as a legal concept, contact has a narrow focus and is primarily concerned with the relationship between the child and non-resident parent. However, as this chapter has shown, parental separation does not only affect the relationship between the child and non-resident parent. Parental separation has ripple effects that involve other aspects of children's lives. The presence of domestic abuse can complicate these further.

This all raises questions about how children's views are considered when weighing their best interests and begins to question the efficacy of methods used to collect them. When considering the views of the child, the context and the reasons that underpin these views are important and may offer insight into the child's circumstances. Findings from this research show how contingent children's views might be. Mechanisms that have a narrow focus on whether or not children want contact or not risk overlooking the strategic weighing that children may undertake when forming views about contact.

The next chapter focuses on the ways in which children participate in decisions about contact. It examines children's experiences and views of participating in informal and formal contact decisions.

Children's participation in decisions about contact with non-resident fathers

1 Introduction

Significant and growing interest has been paid to children's participation in disputes about contact in recent years. In part this has been fuelled by the CRC. Article 9 of the Convention requires that where children are separated from a parent, children have the right to maintain personal relations and direct contact with their parent unless it is contrary to their best interests. Article 12 confers on children the right to express their views freely in all matters that affect them and for these views to be given due weight in accordance with their age and maturity. Article 12 also requires that particular attention should be provided to these views in any judicial or administrative proceedings.

As discussed in *Chapters Three and Four* a body of empirical research and theory has developed around children's participation in disputed contact. This chapter builds on this body of evidence in its examination of children's experiences and views of their participation in decisions about contact in the context of domestic abuse. To a lesser extent it also examines women's views about their children's experiences of participation. As discussed in *Chapter Three*, to date there has been no Scottish research that examines children's views and experiences of contact with fathers when there is domestic abuse. This is important in light of recent legal reform in this area and because Scots law is viewed as the most progressive in terms of children's participation in the UK. This chapter makes a new contribution to this area with its examination of children's participation in both non-legal and legal decisions.

The chapter outlines the children's contact histories, exploring how children were involved in decisions made about contact, and examines the ways in which the views of the child may be contested in disputes about contact. The chapter discusses how children's views and their participation are contested in parental disputes about contact. It concludes by providing insight from children and their mothers about the current legal mechanisms for involving children in contact disputes, paying particular attention to the role of court reporters and points to some of the limitations that may arise from this.

2 Contact histories

The children interviewed for this research had experienced a range of contact arrangements, the majority of which had changed over time. Thirteen of the sixteen families had contact arrangements that were court ordered; the remaining three families had contact that had been arranged outwith court. The fact that a high proportion of the families had resorted to court to resolve contact disputes correlates with other research. Although most families negotiate contact outwith court, families who seek court assistance tend to have high levels of entrenched conflict and for a significant proportion of these families domestic abuse is a factor (e.g. Hunt and McLeod, 2008). Entrenched conflict and domestic abuse were characteristics of all the families that are included in the study.

Across the thirteen families where contact had been ordered by a court, a variety of orders were in place. In three cases there were orders for 'no contact'. In one case there was an order for 'supervised contact' at a contact centre, which was as an interim measure while a court reporter carried out a bar report. In the other nine cases there were contact orders for 'unsupervised contact'. There were no orders in place that required indirect contact like letterbox contact or telephone contact.

The frequency and amount of contact ordered varied across children. For instance one child spent almost half each week with her father, compared with another child who had four hours of contact with her father every six weeks.

There was variation in the levels of contact taking place in the families where contact was arranged without court involvement. In one case, contact was organised on an ad hoc basis and had taken place infrequently. In the other two cases, contact generally took place weekly and involved overnight visits. However these arrangements changed regularly. It was common for contact to be cancelled without much notice. In one case it was the father who made the changes and cancellations and in the other cases it was the children and the mother were mostly responsible for them.

All the children had intricate contact histories. There was no clear pathway where contact arrangements were made and contact took place without problems. Across all the families (both those who resorted to court and those who had not), there were histories of interruptions to contact, and there were on-going disputes about contact. In some cases, disputes about contact had lasted years and had been punctuated by returns to court.

2.1 Contact immediately after separation

Despite the differences in contact arrangements, it was striking that all children had informal contact arrangements almost immediately after their parents' separation. Even though parental separation had often been abrupt and in many cases had followed a serious attack on women, arrangements for contact were made between women and men. This presents something of a counter narrative to the legal characterisation in contact disputes where women are presented as 'implacably hostile' to contact; this depiction has also been challenged by Harrison (2008). Contrary to this construction where women are cast as purposefully withholding or obstructing contact, all women had facilitated contact. In spite of the abuse that they and their children had been subjected to, the majority of women viewed father-child relationships as important to their children and important to their children's wellbeing. Women had wanted to preserve these relationships through contact arrangements.

Women identified children's current and future views and feelings about contact as reasons why contact was important. Some were concerned that actions they might take to limit or prevent contact might have negative consequences for their own current and future relationships with children. This is exemplified in the following extract from an interview with Emma:

However, when I had to eventually go into refuge, and there was that big split, that he found probably more difficult than we did, I was still quite pro access. I still thought that the children should see their dad. Although there had been breaches of the peace, you know, assault and all that going on during that period...I still felt it was important for them to see their dad. Because partly selfishly, that I didn't want them to put him on a pedestal and yearn for something that they don't have, and resent me for not letting him see them.

Emma reveals that, despite her experience of abuse before and following separation, she was still in favour of her children having contact. She identifies her feelings of being "pro access" as stemming from a concern about her own relationship with her children; not necessarily because contact was 'good' for them. Her views on what the absence of contact might mean for her relationship with children echoes some of the discourse about contact that was discussed in *Chapter Three*. Emma highlights that contact with a father can ensure children do not come to resent the resident parent for the loss of their other parent. One interpretation of Emma's account might be that through contact, her children would be able to experience first hand what their father is like and form their own judgements about him accordingly.

Children's views and experiences of contact are addressed more fully in *Chapter Six* and in *Chapter Eight*. However, it is worth briefly considering children's feelings about the contact that took place immediately after their parents' separation at this point. They provide an important context to any discussion on children's participation in decisions about contact.

When asked to reflect on how they felt before the first contact with their father, some children described feeling happy and excited. They had missed their father and looked forward to seeing him again. The majority (including some of those children who described being happy) felt worried and nervous about contact. When asked to elaborate on why they felt this way, it became apparent that many children were concerned with their fathers' mood and how it might manifest during contact. They were worried that he might be angry with their mother or with them. They suggested that this anger might emanate from the separation or its consequences, particularly that they no longer lived with their father.

Considering the abuse that characterised their parents' relationship and the significance it held in parental separation, it is unsurprising that many children were worried and nervous of these 'first' contact meetings. However, the rationale for these feelings should not undermine their importance. Children's concern about their father's mood underlines a fundamental difficulty that many children encounter when dealing with contact in the context of domestic abuse. This was also evidenced in the work of researchers like Peled (1998) and Thiara and Gill (2012).

2.2 Interruptions to contact

Despite contact arrangements being in place, it was common for children to have periods of time where they had no contact with their father. Although children were conscious that contact had stopped, in many of the cases children did not seem to know or understand the reasons for this. Suspensions in contact often preceded decisions to go to court to resolve disputes about contact. Where women instigated these responses, they often linked them with new incidents of abuse directed by men to women and children and their concerns about the impact contact had on their children as well as children's resistance to contact.

In the majority of cases, children's contact with their father resumed after court involvement. There were a few examples where court involvement resulted in

temporary increases in levels of supervision of contact via contact centres. In others, it led to changes in who was involved with contact orders and where these handovers took place. These were practical measures that appeared to be used to reduce opportunities for women and men to see one another, and presumably, to reduce opportunities for conflict or abuse to take place. Returning to court was not a singular event. In many cases, disputes about contact involved several returns to court and several disruptions to contact.

Interruptions to contact were also instigated by fathers. These happened even when there were active court orders for contact and mothers were facilitating contact. Reasons for these interruptions were less clear than those that led to a return to court. Children were particularly confused and upset by these interruptions. In John's case his father stopped contact for five months. John linked the interruption in contact to the repeated moves that he had to make after his parents' separation:

John: And I never got to see dad for like, five months. Cos, I was at granddad's and then I was at the flat, and then I was another flat and then I moved in with my brother at that flat. And then I went to another flat, and I got to see dad. So, from the last flat I have got to see dad again.

The interview with Pamela, John's mother, revealed that many of these moves were because of her ex-partner's abusive behaviour following separation. John's mother linked the period of 'no contact' to when court proceedings about contact were taking place. Although there was an active contact order in place and John's mother facilitated contact, his father had simply refused to have contact with John and his brother. As described in the extract from her interview:

Pamela: He decided, he told the court that he didn't want to see them. He sat in court, he had a solicitor and his solicitor dumped him because of the way he was behaving. And he was representing himself for a few months... So he would sit in court and say, 'I don't want to see them.' And the Sheriff would go mad, 'they are your kids!' 'I don't want to see them.'

Regardless of what John's father's reasons might have been, his decision to refuse contact had a confusing and negative impact on John. Other fathers had also self-imposed periods where they had no contact with their children. These decisions and the circumstances surrounding them could be distressing to children. In Luke's case, the court had made an order for supervised contact to take place at a contact centre. On the day that contact was scheduled to take place, Luke's father refused contact. The background to the father's refusal is significant. It shows how charged and distressing the circumstances in which contact takes place are for some children. The order for contact to be supervised at a contact centre had been made because the previous arrangements which had involved Luke's maternal grandmother supervising the contact had broken down. Luke's father's aggressive behaviour during contact meant that the grandmother was no longer willing to supervise contact. This all took place against a backdrop where Luke's father continued to be abusive and threatening towards Luke's mother outside of contact. This had led to three interdicts being made to prevent the father from attending Luke's school, his football club and his brother's nursery. Furthermore, the risk posed by the father meant that he was not permitted to know where Luke and his mother lived. Up to this point, Luke's views about contact had not been taken by the court.

Luke's father's behaviour during contact and the fact that the interdicts were concerned with locations associated with Luke and his sibling demonstrate how domestic abuse continues to affect children's lives even after parental separation. Unlike his father, Luke did not have a choice as to whether to go to contact or not. His views had not been taken by the court and were therefore not part of the order that had been made. His mother had spent time trying to prepare him for the contact visit. She explained that Luke's father might be upset, but that if he was angry Luke should be reassured that he was angry with her not with Luke.

Luke did not learn that his father would not be attending the contact centre until he was on his way there. In the extract below, his mother describes the distress that this caused Luke:

And he went away and locked himself in the toilet in the supermarket. I had to get an assistant to get him out. So he was kind of, showing it in that way. So he was, he felt totally let down, and that's the period when he starting asking, 'why is dad making such a fuss about the dogs and not about us?'

2.3 Reasons for involving courts in disputes about contact

Although all families had initially made informal contact arrangements, in the vast majority of cases these arrangements had unravelled. Women described courts' involvement in resolving disputes about contact as a 'last resort'. Although they had wanted to resolve contact out of court the conflict between them and their ex-partners had meant that this could not be achieved. All women described their experience of going to court as a negative one. It had been frightening and had taken a significant emotional toll on them. For a few (3) women, the experience had also been financially costly. It was very common for women to report that despite lengthy court involvement, the reasons underlying the disputes about contact remained largely unresolved. In the extract below, Danielle reflects on the lack of progress that has been made at court in resolving the disputed contact:

So when we went back last week, she said go and make an agreement up between yourselves. So [...] we are really back to square one. I spent £2000 for them to tell me what I already know and for them not to make a decision.

As outlined earlier, the reasons given for involving courts in contact disputes revolved around four areas: concerns about the adverse effects contact had on children; children's resistance to contact; ex-partners' behaviour towards women; and ex-partners' desire to increase the contact that was taking place. There was often a degree of overlap amongst the reasons given for involving courts in contact disputes. For instance, women had been concerned about the effects of contact and these concerns became more pressing when a father asked to increase the amount of contact taking place. Women also made connections between their children's resistance to contact with the adverse effects that contact had on children. In Laura's case, she linked her daughter's clear view against contact with the adverse effects that 'forcing' contact to take place in this context would have. Laura described how

her daughter complained of feeling ill before and following contact, and, Laura connected this to her daughter's views resistance to contact.

The most common reasons cited by women for involving courts in contact disputes related to concerns about the adverse effects that contact had on children as well as their ex-partner's behaviour towards them. This is exemplified in the following extract from Sophie's interview, where she describes one of the assaults she was subjected to during a contact handover. In this particular incident, her ex-husband had returned the children four hours later than had been agreed.

So the taxi pulled up, I went down to get them, and...I said to him, this isn't acceptable, I am phoning my lawyers about this in the morning, this isn't acceptable. And he ran down the side of the path and then, he says, you'll no take my kids off me. And this is while I was speaking to my lawyer [on my phone] and just threw his bags away and came running into the garden. At which point I held him, by the shoulders I think it was, and got the kids to go in the house. When I just held him there till, I felt the kids were in the house, and I could then go into the house. And that was fine. And then he slapped me, and then was shouting and balling. By which point we are all crying again. ...At the point where I decided that that contact, and there had been three incidents of violence I reported at contact with him bringing back the kids. So, and the kids had witnessed this. So, that was really how contact stopped.

This experience clearly demonstrates the connection between the effect contact can have on children and fathers' behaviour towards mothers. The assaults on Sophie took place during a contact handover and were witnessed by the children. This highlights how enmeshed the interests of children and women can become in the context of domestic abuse.

2.4 Reasons for not involving courts in disputes about contact

Even in the cases of the three families where courts had not been involved, contact was far from settled. Women still expressed concerns about contact but had pragmatic reasons for not involving courts in disputes. In one case, the woman was living in a refuge and wanted to resolve housing and schooling issues before embarking on a legal dispute about contact. In the other two cases, women were

reluctant to involve courts, as they were concerned it would exacerbate the existing problems that stemmed from contact. In Nicola's case, she had decided not to resort to court, as her children were aged 14 years. As her children were almost of an age where they could determine what relationship, if any, they had with their father, she thought there was little point in seeking legal assistance. She was also cautious of instigating court proceedings that might lead to more rigid contact arrangements than those currently in place.

The children in this case did not have any strong views about going to court to resolve contact. Although they had frequent overnight contact with their father, the lack of formality about the arrangement meant that they were able to 'miss' contact if they wanted. Having this degree of flexibility about contact would have been unlikely if it had been court ordered. However, the uncertainty that existed about contact did present as source of conflict between the father and the children and mother. When the children did not go to contact or respond to what Nicola described as their father's "demands" to visit him they would receive abusive phone calls and sometimes have their access to the family car restricted.

The circumstances and reasons why these families did not resort to court are illuminating. Women, and perhaps to a lesser extent, children may have pragmatic reasons for not seeking court's assistance in resolving disputes about contact. They may be concerned that involving courts could result in contact decisions that they perceive to be worse than the difficult arrangements that are already in place. Importantly, they underline that a lack of legal involvement does not necessarily equate with harmonious or positive contact.

3 Children's participation in decisions

This section describes how children participated in both contact arrangements that were both informal and formal (court ordered).

3.1 Children's participation in making informal contact arrangements

Provisions in the Children (Scotland) Act 1995 for children to express views about matters that affect their lives extend beyond those of courts. Section 6 places a duty on parents to consider the views of the child when making a “major decision” that impacts the child. This suggests that where contact is being arranged outwith courts, parents are required to give consideration to the child's views. However, there is no published information on how parents give effect to this requirement. Children participating in this study, were not routinely asked directly whether or what kind of contact they would like with their father when informal arrangements were made. In most cases, parents discussed contact and an agreement was made. This is not to say that mothers did not talk to children about contact or consider their views and feelings when decisions were made. However, children's views were not necessarily asked for or expressed in a direct way when informal decisions about contact were made.

Although not routinely asked their views about informal contact, children were by no means passive or silent in these arrangements. In a minority of cases, older children made their own contact arrangements directly with their father. This sort of participation brought a particular set of challenges for women and children. Women reported feeling excluded from these arrangements. They often did not have information about the detail of them, including where contact was taking place, when children would be returning home, or who would be responsible for collecting and returning children from contact. It could be difficult for children when they had this role in making contact arrangements. They were responsible for telling their mothers about the arrangements and answering questions about them. In these cases, children's participation appeared to fill a void that had been created by an absence of communication between parents.

In Maria's case, her high level of involvement in making contact arrangements was coupled with an absolute breakdown in communication between her parents. Her

mother had 'blocked' all telephone calls from her father because he would often call and be verbally abusive. As Maria had her own mobile phone, she and her father were able to speak with one another about contact directly. She became the only conduit through which her parents communicated about contact. This meant she passed information about contact from one parent to another. It also meant that she had to manage and cope with the hostility and anger her parents had towards one another, for which contact became a focus.

Maria's experience demonstrates how an absence of communication between parents may lead to increased participation for children. By default, children and fathers may make their own arrangements about contact. It is unclear whether this inevitably leads to children having greater influence in decisions. However, it was clear that in Maria's case, her participation as well as the lack of parental communication left her to mediate between her parents.

As well as having an active role in making contact arrangements, some children had an active role in ending them. Children's resistance and reluctance to contact was a primary reason why informal contact arrangements disintegrated. Children's distress after contact and their refusal to attend contact was a common reason why disputes about contact would end in court.

3.2 Children's participation in court ordered contact decisions

As outlined in *Chapter Two*, several mechanisms exist for children to give their views about contact to the court. A child can give their views directly to the court in writing by completing an 'F9 form'. A child's views may be represented to the court through a court reporter appointed by the court. A child can meet directly with a Sheriff and give their views. A child can also instruct a solicitor to represent their views. If a child instructs a solicitor their views can be conveyed in a range of ways. These range from: from instructing the solicitor to write to the court, to the child becoming party to proceedings.

In this study, all of the children whose contact was court ordered were given the opportunity to express their views. Only one child described completing an F9 form to convey her views about contact. She had strongly conveyed her views against contact to the court through this medium and others. She was also the only child who had instructed her own solicitor and attempted to become party to proceedings. The Sheriff ultimately rejected this attempt. The reasons for this were unclear, although her mother's perspective was that the Sheriff did not agree with the principle that children should be party to such disputes. In the extract below, the mother reflects upon her daughter's attempts to participate in decisions about contact that were ultimately rebuffed by the court:

Laura: I got it in the neck for Claire having a lawyer of her own... Claire's lawyer wasn't allowed in the court.

Fiona: Why was that?

Laura: I don't know. And the Sheriff didn't respond to Claire's request to see her and speak to her about it. She was ignored. Claire [had written a letter that] said 'I want to speak to you about contact, I am going to the top, you are the person who makes the ultimate decisions and she just wasn't interested she just didn't even respond.

Only one child met directly with the Sheriff to convey his views about contact. In this case, the dispute related to Ross's father's desire to have overnight contact and his mother's resistance to this because of concerns about Ross's father's drinking. His mother said that before meeting the Sheriff, Ross's views had been against overnight contact. However, when Ross met with the Sheriff, he expressed a different view, telling the Sheriff that he wanted overnight contact with his father. His mother was confused by this change in his views. She thought that perhaps Ross had been worried that his views would upset her and so had claimed to have similar views to her. In my interview with Ross it seemed that his views about contact were subtle. He said he did want overnight contact with his father *and* had concerns about his father's drinking. Ross's concerns did not preclude his desire for overnight contact. Perhaps during their meeting, the Sheriff had been able to explore the

subtleties of Ross's views. Another interpretation could be that the Sheriff heard that Ross was not completely opposed to overnight contact and gave weight to these views.

The most common way that children gave their views in cases of court ordered contact was through a court reporter. However, court reporters' roles are not limited to gathering children's views. In all of these cases, court reporters had been appointed to carry out a bar report on the circumstances of the child. Ascertaining children's views about contact was one aspect of their investigation into the child's circumstances. Court reporters also interviewed parents and in some cases observed contact visits between children and fathers and reported on these. Morrison et al (2013) highlight that the role of court reporters can overlap with the child's right to express a view. The lack of distinction between these roles that court reporters undertake and the resulting difficulties was stark in some cases.

In a minority of families (3 cases), the same court reporter sought children's views, completed bar reports about contact and played an active role in facilitating contact whilst court processes were taking place. In these cases they acted as third parties for contact handovers where conflict between parents had been particularly entrenched and where children had also resisted contact. The court reporters' involvement had the effect of ensuring that contact took place and of 'restarting contact'. This sort of intervention was viewed negatively by the women in the study and by some of the children. It was seen as forcing unwanted contact between children and their fathers.

In the following quote, Laura describes how the court reporter "forced" her daughter to have contact with her father. This relates to the first contact visit that took place following an interruption to contact because of the child's refusal to have contact:

Clare had gone upstairs to see her dad he had said to her 'you must be very angry with me' and tried to put his arms around her. She said 'get away from me, get off me'... Then came running, bursting floods of tears coming down the stairs. And the court reporters said 'You'...and he was this far away from her, and I was sitting there and I was supposed to be you know encouraging her....He said you are normally a well behaved child, you will now go up

those stairs and see your father. This was the court reporter in a cafe, on a Saturday....I thought I can't intervene I had to let it happen and she went back upstairs.

Occupying a role that facilitates or that even forces contact has serious implications for the court reporter's ability to support children's rights to express their views about contact. If a court reporter forces a child to have contact, what might this reveal about how they regard that child's views? It raises concerns about whether children can express their views freely in this context and how these views might be represented to the court, particularly in cases where children's views are so contrary to the actions of the court reporter.

4 Contesting the voice of the child in parental disputes

Chapter Two reported that the role that children should have in disputes about contact is contested in the literature. Some critics voice concern that children's participation in parental disputes can increase the levels of parental conflict that children are exposed to. Arguments are also made that participation 'over burdens' children. It can place what may be an unwelcomed responsibility for decisions on children (e.g. Warshak, 2003). Conversely, others warn that excluding children from these disputes can lead to the needs and interests of children being obscured by those of their parents. Other arguments for children's participation include the idea that whether contact is desired by a child affects whether contact brings positive outcomes for children (e.g. Eekelaar, 2004 and Freeman, 2007). These notions amongst others are explored in this section on children's participation in disputes about contact.

There was a consensus amongst children on the general principle that children must be given the opportunity to express their views on decisions about contact. When asked to elaborate on why this was important, children often made connections between children's views and children's welfare. They did not always agree with the

distinction made in law between children's best interests and children's views. Children often conflated these concepts and found it difficult to separate them. This was especially true of children whose views against contact had not been reflected in the contact decisions made by Sheriffs. An example of this is given in the extract below:

Claire: Speak to the child. See how they are feeling. Because if the child is not happy with the decision, then its not going to happen is it? Take your child's views first.

Claire's quote draws attention to a challenge in children's participation in decisions about contact. Whilst in law children's views are treated as part of what the court considers when weighing best interests, children may not understand this distinction or may not necessarily agree with what the court determines to be in their best interests. Claire's quote also indicates that, whilst courts may make orders, the child may resist contact if it does not coincide with their views. Claire questions the passivity that the legal system assumes children have. This can perhaps be interpreted as a call to involve children to a greater degree in the contact disputes. This does not necessarily mean to make orders that always reflect the views of the child, instead it suggests ensuring that adequate consideration is given when children's views are contrary to the decision of the court. Claire highlights how different understandings and disagreements as to the role of children's views in contact disputes can lead to significant confusion and frustration for children.

Children had different views on the issues around contact that they wanted to give views on. There was also variation across children about the extent of influence they wanted to have in decisions about contact. As highlighted in the extract above, some children wanted their views to be the most influential in the decisions made. However, the majority of children's experiences of giving their view had not always been easy or without cost. This was apparent during the interview with Luke; when asked about the changes he would make to improve his experience of giving views, he replied that "next time I'll be at school". From his interview it did not appear that there was a particular aspect of giving his views that he had found difficult or

upsetting. Instead, it seemed that Luke found it difficult that his views had been elicited against the backdrop of his parents' dispute. . This highlights that as well as it being important for there to be opportunity for children to give their views, there also have also to be opportunities for children to decide not to participate in disputes.

The majority of children were more ambivalent than Claire about the influence they wanted their views to have in decisions. Children were often worried about the impact that expressing views would have on one or both parents. For instance, although Michael was unhappy with his contact arrangements, he found it incredibly difficult to articulate what changes to the arrangements could improve contact. He repeatedly referred to the importance of contact being "fair" to both his parents. Equating this with spending an equal amount of time with each parent. Michael found it impossible to separate his own views about contact from his preoccupation with how her parents might react to his views.

Children generally wanted adults (preferably their parents) to make decisions about contact and take account of these views in their decisions. Some children described wanting to influence the time, frequency or location for contact. However as these issues were a source of particular conflict between their parents or with other children they were keen to avoid participating in these sorts of decisions. Children's views about this issue were often inconsistent. While they may have wanted their parents to make the decision about contact and their view to be part of the consideration, they often did not want their parents to know what their views were. When prompted, this did not seem to reflect concern about one parent discovering their views more than another. One interpretation of this is suggested by the literature review literature discussed in *Chapter two*, children perceive post-separation parenting arrangement to be an adult responsibility. Another is that children's experience of participating in legal disputes has been so negative that they would prefer an alternative method for resolving contact disputes. Regardless of the underpinning reason, this finding highlights how fraught the issue of expressing a view may be for children. Further research would be necessary to elaborate on this point.

Disputes between their parents' undoubtedly complicated children's participation. They found participating in this context difficult. Children's concerns about their parents' reactions were so overwhelming that they found expressing their views virtually impossible. This somewhat echoes *Chapter Two's* discussion that children's participation can be detrimental when used to resolve or settle conflict amongst parents.

4.1 Knowing too much or not enough?

The extent to which children need to know about all of the circumstances surrounding contact disputes is debatable. Arguments can be made that knowledge of parental conflict does not benefit children. This is an issue that is particularly potent in the context of domestic abuse. While children are acutely aware that domestic abuse has been carried out, they did not necessarily know the full details of the abuse. This lack of understanding can be compounded when parents provide children with sanitised accounts of the circumstances that led to parental separation.

Several women questioned whether their children had sufficient insight into the risk that their father posed to form a view about contact. In Ruby's case, her mother did not tell her about the threats her father had made following parental separation, including his having threatened to kill her uncle. Ruby did also not know that her father had spent time on remand because of the assault on her mother that led to their separation. It is questionable what if any benefit there is in making children aware of the extent of their father's abuse. However Ruby's case highlights that children's views are often given in a context where they have a partial understanding of the abuse that has been carried out. Children may not be cognizant of the risk that contact with their father might pose. This is underlined in the extract from Sophie's (Ruby's mother) interview:

My concern is: yes they were desperate to see their dad, but the children have no insight to their safety. They don't. They want to see their dad, they love him, they adored him, but they had no insight as to whether he was high on drugs or whether somebody is going to come to that door to retaliate about

this hammer attack. You know? So I thought, why must, yes, they care to see their dad, but they don't have the insight.

There were children in the study who had intimate knowledge of the difficulties that existed in their parents' relationships. It appeared almost unavoidable that children would become actively involved in these difficulties. A good example of such a difficulty was money. It was obvious to many children that they and their mothers were markedly poorer since their parents' separation. The majority of children and women had left their home at the point of separation and were now living within very constrained finances. This was a particular source of dispute between women and men and children often became involved in these. For example, Michelle's father had not provided regular financial support for his children since parental separation. Michelle's mother would encourage her to ask her father for money during contact. Michelle's mother did not speak to her father because he continued to be abusive towards her since separation, through his being verbally abusive during phone calls, and through attempting to assault her the last time they had met. In not speaking directly to her ex-husband, Michelle's mother limited the potential for continued abuse. Nonetheless, as Michelle explains, she did not want to participate in these disputes about money:

Fiona: Is there particular things that you'd rather not be involved in or?

Michelle: Money aspects. I don't want to be involved in that.

Fiona: Do you feel like you're getting brought into that or is it?

Michelle: Sort of, because my mum says, 'tell your dad to get the money'. And I'm like 'dad mum needs money'. He's always like, 'no'. And then I have to go and tell mum she can't have any money.

Unless children are party to proceedings about contact disputes, there are no formal mechanisms for children to receive any direct information from the court about decisions that are made or what has been spoken about at court. The children in the study received information about the disputes predominantly from their mothers, although in some cases they also received information from their fathers. Any

information that children received was filtered and to some extent influenced by a parent's perspective. There were some examples of how having a lack of formal or impartial information might have had the effect of further drawing children into conflict and disputes between parents. For instance, Laura described how Claire would return from contact with their father and repeat the negative things that the Sheriff had said about her during proceedings.

There were also examples of how children's participation in disputes was used by fathers to manipulate mothers and to undermine their role as a parent. In Luke's case, a curator had previously been appointed to safeguard his interests during his parent's dispute about contact. The curator had taken Luke's views and represented them to the court. Since the court case, Luke's mother started a new relationship. Luke was not happy about this, and told his mother that his father would ask the curator to come back and visit. This would allow Luke to tell the curator that he was unhappy about his mother's new relationship and in Luke's mind the court would subsequently tell her to end the relationship.

Emma: Yeah. Cos over Xmas, Luke came out with a few comments which, all led round to him sort of being set up by his dad. And it is quite annoying actually, because anytime something doesn't suit, not that there has been that many occasions like that, but he will say, my dad is going to get the curator out to see me.

This uncovers a tension that exists in children's indirect participation in an adversarial process. To what extent does their knowledge of or direct participation mean that they are subsumed into further conflict and what potential has this to do further damage to children's relationships with their parents.

5 Legal processes for children's participation in parental disputes about contact

This section reflects on children's and women's views and experiences of the legal processes available to children to give their views in parental disputes about contact.

As the most common way for children to express their views was via a court reporter, this section focuses almost exclusively on this mechanism. However, much of this discussion is applicable to children's participation in parental disputes about contact more generally.

5.1 Time and space to form a view

Children often described having little or no advance notice that their views on contact were to be taken. In Suzanne's case, the first she learned that her views were to be taken was when she met the court reporter at her school:

Fiona: Did you know that you were going to meet him?

Suzanne: No. My teacher just told me that he was going to see me that he was going to speak with me.

Like many other children, Suzanne only met with the court reporter on one occasion. This was the only opportunity that many children had to convey their views about contact. Such an approach assumes that children's views are already formed. It conceptualises views as being neatly packaged and that they can simply be extracted by a court reporter. This underestimates the complex and contradictory feelings that children may have about domestic abuse, parental separation and contact as evidenced in *Chapter five*. Individually, these are significant issues which children may not have straightforward or readily available views on. Anticipating that children are able to easily provide court reporters with a settled view that accommodates all of these issues seems to conflict with the feelings that children may have.

Children may need time and to be given opportunities to talk about what has happened in their family before they can begin to think about the sort of relationship they might want with their father. The distinct lack of warning given to children that their views were to be taken, lack of any preparation to help them consider what their

views might be and the implications of these meant that eliciting children's views did not always appear to be a meaningful process.

5.2 Relationships and trust

Children also repeatedly identified the importance of having a relationship with the person they were giving their views to. Children wanted to be able to trust the individual before they shared their views about contact. However, as children had no pre-existing relationship with the court reporter, they were expected to share their views on what are difficult and sensitive issues with someone they considered a stranger. These ideas are exemplified in the extract from Toby's interview:

Fiona: Was it easy for you to tell him what you wanted?

Toby: No cos I was nervous.

Fiona: What were you nervous about?

Toby: I don't know. I never got to know him very well. It was only on one day.

Children's views were often taken in school. This location was perhaps selected as it was seen to be a familiar and neutral venue which was not connected to a particular parent. This was an issue that the review of case law in *Chapter Two* highlighted as important when taking children's views. However schools are places of discipline and rules. Children's teachers were present in some cases where children's views were taken. For some children this may restrict their ability to give their views. Their teachers may not know about what has happened in their family or children may not feel comfortable talking about it in the presence of their teachers. Furthermore, giving views about contact can require children to speak frankly and negatively about a parent and doing this in a school environment can be especially daunting. Adults may not always be willing to hear these views from children.

5.3 Encouraging children or coercing them?

Interviews with some women and children highlighted further problems with court reporters. At times there was confusion about the court reporter's role. This stemmed from the overlap between their roles to investigate a child's interests and to elicit the child's views. Some women described how court reporters 'coerced' children to agree to contact when they were seeking their views. This is exemplified in the extract from Laura's interview:

So they got this court reporter, and male teacher, two men in the same room with her on her own and they stood over her until she said she would agree to see her father again. She came back to me and she said, 'I was absolutely terrified. That they were you know, this is my word it's grown up word, they were 'intimidating' her. And since that date she has never felt that she could talk to that teacher, it's broken her trust in that teacher.

These findings question whether having a role to both investigate children's interests and take children's views is appropriate. They also question the practice of some court reporters and what court reporters perceive their role to be. Is their purpose to make contact happen, to report on the child's circumstances, to represent the child's views, or some combination of these?

5.4 Confidentiality of children's views

The extent to which children's views are treated in confidence was addressed in the literature discussed in *Chapter Two*. Whether and the extent to which children's views were treated confidentially was a powerful issue for children. Many children identified the importance of being able to convey their views to a third party unconnected to their parents. They were very concerned about what might happen if they expressed a view about contact that was contrary to those of a parent. Speaking to a third party was seen as a way to minimise any distress or anger that their views might cause:

Fiona: Are there things that would make it easier for children to give their views?

Joanne: Em just to say it to someone else, not their mum and dad.

Fiona: Someone who is not involved?

Joanne: Yeah because mum and dads can get angry and it could get them more angry and stuff.

Although speaking to third party alleviated some of the children's concerns about giving their views, this measure did not suffice for others. Some children continued to worry about might happen to their views once they had been given. These children were particularly concerned that parents might find out what they had said and might have negative reactions to these. This is illustrated in the extract from Suzanne's interview:

Suzanne: It would be easier if I knew the person more. If I knew them and I knew that they weren't going do anything. They were going to help me but they weren't going to tell anyone.

Fiona: Who would you be worried that they were going to tell?

Suzanne: They might tell my parents and then they might not like my decision.

This presents a real challenge for involving children in decisions. If confidentiality is not guaranteed before children are asked their views will they feel able to share them? What happens when a child gives their views and a parent does not deal very well with hearing their child's views?

5.5 Being informed

As discussed in earlier, children do not routinely receive any formal feedback from the court on their participation unless they are legally represented. In general, children's participation in formal decisions started and ended when they gave their views to a court reporter. Children were not told how their views were represented to the court. They did not have access to the bar report containing their views written by the court reporter. Children did not know what the Sheriff's reaction had been to

their views, nor did they find out how influential their views have been in the decision made about contact. While of course children may hear about these issues from their parents, they do not hear from the court. This raises serious questions about the respect afforded to children's views and their participation in disputes about contact.

6 Conclusion

This chapter has discussed the intricate contact histories of children. These were characterised by interruptions to contact, as well as parental arguments about contact and, in many cases, repeated legal disputes about contact.

Although children who had informal contact arrangements were not routinely or formally asked their views about contact, this did not mean that they were passive or silent in the arrangements. A few older children, not bound by court orders, made their own contact arrangements with their father.

Children whose contact arrangements were subject to legal orders had their views taken by various mechanisms during proceedings. However, as seen in other research, children's views in legal disputes about contact were most frequently taken by a court reporter.

The overlapping role of the court reporter to investigate a child's interests and elicit the child's views was found to be problematic in a number of cases. This was evident when a court reporter facilitated or 'forced' contact between children and fathers in a context where the child had expressed views against contact. These findings question whether having a role to both investigate children's interests and take children's views is appropriate. They also question the practice of some court reporters and what court reporters perceive their role to be.

Children considered it important that their views were part of the contact decisions made by adults. However, some children queried the legal distinction between children's best interests and children's views. There were differences between

children about the influence they wanted their views to have in decisions about contact.

Findings also highlighted tensions reported in the literature about children's participation in family law. Some mothers questioned children's competence to provide an 'informed' view about contact. This was connected to children's partial knowledge about the extent of their fathers' abuse and whether children were fully appreciative of the risk that contact posed. A further tension related to whether children's participation about contact meant that they became more involved in their parents' disputes than they might have been otherwise.

Children provided critical accounts of the legal mechanisms that sought their views. These accounts questioned whether mechanisms were sensitive to the difficult and contradictory views and feelings that children may have about contact. The lack of preparation or warning that children's views were to be taken by a court reporter was highlighted as problematic. Children were not provided opportunity to consider their views or reflect on their implications before giving them.

The importance of relationships and trust when children are asked views about contact was also highlighted. The absence of any pre-existing relationship between children and court reporters acted as a barrier for some children's participation. The appropriateness of schools as a location for views to be sought was also questioned.

The issue of whether children's views are treated confidentially in court processes was significant for children. This was central to whether they felt able to express their views. Children's concern that their parents might discover their views and react badly to them was a barrier to participation.

These findings all raise important questions about the efficacy of methods in Scots law that are designed to enable children's participation in disputes about family law. In particular there are questions whether children's participation rights are respected and whether they enable children to express views about contact freely.

Chapter eight examines more closely the experiences of contact that resulted from children's participation in decisions.

Experiences of contact when there is domestic abuse

1 Introduction

Previous chapters have highlighted how domestic abuse is conceptualised, as important. *Chapter Two's* review of case law demonstrated that courts currently focus on particular incidents of abuse or violence and the evidence for this when dealing with disputes about contact. This appears to conflict with *Chapter Three's* discussion about, feminist perspectives on domestic abuse. These urge for an analysis of domestic abuse that goes beyond particular acts of physical violence. They highlight the importance of considering the range of behaviours that are used by perpetrators to coerce and control victims, along with the fear that domestic abuse engenders, and ways in which it constrains victims' lives. These ideas were evidenced in *Chapter Four*, where predominantly mothers reported how their and their children's lives were affected by domestic abuse before separation.

Notions that domestic abuse is only a problem for adults are dispelled by research. It shows that children are often witnesses to (e.g. Stanley et al, 2010) may be involved in (e.g. Mullender, 2002) and affected by domestic abuse (e.g. McCloskey et al., 1995). *Chapter Four* corresponded with this research with findings on how children had been exposed to their fathers' domestic abuse before parental separation. It reported on how children witnessed, intervened and were drawn into their fathers' abuse of their mothers. It also reported on how some children were also targets for their fathers' abuse.

Domestic abuse is often constructed as a problem that stems from the nature or dynamics of a particular relationship. This understanding of domestic abuse encourages the idea that domestic abuse will end when the relationship ends. From

this perspective, contact when there is domestic abuse may be seen to be unproblematic, as risk of domestic abuse has dissipated since the relationship has ended. However this construction of domestic abuse is contrary to a growing body of research. Research evidences that victims experiences of domestic abuse may not end with separation. Domestic abuse may continue following separation, it may also escalate around the time of and immediately after separation. (e.g. Brownridge et al., 2004). Following separation, children are often the only reason why women and men have to continue to relate to one another. Research shows that the presence of children is a risk factor for continued abuse (e.g. Brownridge, 2006). Therefore relationships with children and child contact arrangements may provide a focus or platform for continued abuse to take place.

Chapter Two's review of legislation highlighted that parental co-operation and domestic abuse have been marked out as specific issues for courts to consider when weighing a child's interests. However, as the review of case law reported, findings of domestic abuse do not preclude a court from ordering child contact. *Chapter Three's* discussion of the research on children and contact revealed that while contact may be generally positive for children, contact is not positive in all circumstances. Research consistently reports that the quality of contact and parenting are crucial for children's outcomes, as are levels of parental conflict and the child's relationship with the resident parent. These points raise further questions about contact when there is domestic abuse.

This chapter examines children and women's experiences of post-separation contact. It highlights how domestic abuse continued following separation. The findings in this chapter make a new contribution to the existing research with its analysis of the on-going relational consequences of domestic abuse and the implications these have for children's contact. The chapter underlines that domestic abuse and problems relating to parental co-operation were inseparable for children in the study. It discusses how the absence of communication between parents, which can be traced to domestic abuse, and disputes about contact may increase children's vulnerability to exposure

to further parental conflict. These findings are especially important when we consider the provisions of the Children (Scotland) Act 1995 to consider both domestic abuse and parental co-operation when weighing children's interests.

2 Domestic abuse following separation

For all women in the study, separation did not translate in the end of domestic abuse they experienced. Abuse continued in severe and subtle ways. This section describes the ways in which domestic abuse continued following separation, and how contact in particular served as a means for men to continue to abuse.

Research shows that the point of separation and the period immediately after can be the most dangerous time for women and children. It is when abuse is likely to increase in severity and when women are most likely to be killed. (e.g. Hotton, 2001) Many women spoke about an escalation of abuse before and immediately after separation. Jennifer's experience highlights how women and children can be particularly vulnerable at the point of separation. In her interview she described the repeated moves she and her children had to make in order to escape from abuse. Jennifer and her children had initially moved from the family home to her father's house following separation. However her partner continued to harass her whilst she lived there. He constantly called her mobile phone and her father's landline. He appeared uninvited at her father's house and made threats to both Jennifer and her father. This led to Jennifer and her children having to move to a refuge. This did not stop her partner's harassment. He continued to call Jennifer and leave voicemails threatening to come to the refuge and take the children. The staff at the refuge considered her partner too great a risk to Jennifer her children and other people living at the refuge. As a result Jennifer and her children had to move to different refuge. Jennifer's experience underlines how separation does not always equate with the end of abuse and that women and children can be particularly vulnerable when the relationship ends.

Significant events like divorce proceedings and women finding new partners all correlated with abusive episodes. A significant minority of women (5), described being afraid that their ex-partner would kill them. This was before and after separating from their partner. Their fear was connected to the severity of his previous attacks and the threats he had made. For instance, Alice received several phone calls from an unknown person who threatened to slit her throat following separation. She was convinced that her ex-husband had orchestrated these phone calls and was behind the threats.

The majority (14) of women described being harassed by their ex-partner after their separation. Harassment took a variety of forms; it was connected to children's contact but also took place outwith the realms of contact arrangements. A number of women reported that men turned up at places where they knew women and children would be likely to be. These were not part of contact arrangements and often led to further abuse, as exemplified in the extract the interview with Lydia below:

[He was] just shouting at me and swearing at me. Following me, I went to the school, if he can't get me in the house he used to wait behind the school. And he has made a scene at the school before, so obviously I don't want to make a scene at school... I was walking round, I hadn't seen him, and he was, just like the end of the road... he was walking down towards me and I tried to ignore him. He is like that, following me all the way round, and I am walking on the pavement and he is walking on the road. And he was like, nipping at me, Victoria (the daughter) is not mine, Victoria is not mine, all the way round to school.

Lydia's experience shows how men may use their children to locate women and abuse them further. Not only was Lydia's ex-partner verbally abusive towards her, he was abusive in public at her daughter's school. Her experience shows how abuse crosses social space. Emma provides another example of how men used their children to continue harassing their ex-partners:

..then his obsession grew so much that he was everywhere we turned up. He was at my son's football club, he was, and it was upsetting the children, but it was embarrassing them too. You know, it is in front of their mates. So they

were beginning to, I have never asked them if they wanted to see their dad, I have never said, do you really want to see him, just now? You know, while I know that they are not, I have never said, you know. But I could see Luke was embarrassed, he felt awkward, he felt guilty towards me. I was visibly upset. He was very clever, there was interdicts in place that he couldn't verbally abuse me but, he would just say a couple of words that meant something to me, but meaningless to other people. And that would set me off. And for a big strong looking woman, and this wee guy, cos he is a wee bloke, I would just go to pieces. And the children were seeing me like that all the time.

Lydia's account highlights that even abuse may continue when legal protective measures like interdicts are in place. It also shows that actions that may seem benign take on a completely different meaning in a context of abuse (Dobash and Dobash, 1980). While in other circumstances it might be regarded as positive that a non-resident father makes an effort to see his child, in this case it was experienced by Lydia as frightening, and distressing, and experienced by her son Luke as embarrassing and awkward. Lydia alludes to the ways in which abuse may be invisible to others with her phrase "he would just say a couple of words". This shows how her ex-husband did not need to use physical violence to inflict hurt, making connections with feminist perspectives of domestic abuse. As Lydia reveals, during contact or at 'chance' exchanges, children may witness the impact of abuse on their mother and be affected by this. This may be magnified when it takes place in a public environment. Unlike pre-separation domestic abuse that predominantly occurs at home, post-separation abuse may be more likely to occur outside of the home. In Luke's case it took place in front of his friends.

Women received abusive and at times threatening telephone calls, text messages and emails. For example, Annabelle described a period where she received around twelve emails each day from her husband after they had separated. In the extract below Annabelle describes the content of the emails that her husband sent.

And it was just bizarre, from chit-chat to veiled threats, nothing explicit, but this is what he was going to do. He might just go and see my mum, and that would set me off in a panic, but he didn't. You know, it was just up and down, up and down and up and down. And it was, you couldn't predict what each one was going to say.

The extract illuminates how domestic abuse extends beyond separation, and the ways in which it can engender fear. Although Annabelle's husband did not make any direct threats to her or her family, the suggestion that he might visit her mother was enough to frighten Annabelle. The fact that in the end he did not visit Annabelle's mother or harm her does not erase the fear or distress that the email caused. The frequency and unpredictability of communication made it difficult for Annabelle to 'switch-off' from her ex-husband. She was fearful of him and what he might do even once their relationship had ended. While her husband might not be physically abusing Annabelle, his communication meant that he remained an unwelcome and harmful presence in her life.

In the quotation below, Danielle describes some of the violent threats she received since separating from her partner. As part of his bail conditions, which were a result of an attack made on Danielle, her ex-partner was not permitted to contact her. Despite these measures, her ex-partner was able to continue to abuse her, threatening her albeit indirectly:

Danielle: Well since we separated, I got a lot of hassle, to be honest. I got threatening phone calls, you name it, I got it. I got phone call using other person, will kill me, slash me or they will hurt me or cut me up.

Fiona: This was your ex partner?

Danielle: I don't know. Something to do with him. But he not phoning by himself, he use the other person...But I know it is him.... And he is shouting abuse at me in the street. Still managing to phone and use a withheld number, to threaten and blackmail, all the time, you know. It is completely, it is a nightmare - I don't feel safe wherever I go.

Danielle's description of post-separation abuse again highlights the relentlessness and pervasiveness of domestic abuse. Even with protective measures in place, her husband continued to be abusive towards her. The abuse was not even restricted to 'private' telephone calls; he was also abusive towards her in 'public', shouting at her in the street. The impact of this on Danielle is evident from her quote; she did not feel safe.

Continued harassment after separation did not always involve threats; but served the purpose of intruding in women's lives, putting them on edge and in some cases restricting their lives. One woman described how her husband would go through her rubbish and line up any empty wine bottles next to the front door of her house. He would send her texts at work, telling her that he could see her mother in her home with the children. Another woman who was studying at university described how her husband repeatedly had her called out of lectures. He would phone the university and saying there was an emergency that she had to urgently deal with. There never was an emergency; he was simply disrupting her attempts to study. These tactics have obvious impacts on the lives of women. They cause fear, uncertainty and disrupt women's lives. In these ways men continued to be an unwelcome and negative part of women's lives. As a consequence women became vigilant and fearful of what might their partner might do next.

Some women changed their telephone numbers and blocked their ex-partner's number in a bid to stop receiving abusive calls and texts. However this would often create difficulties for contact. In some cases, women and men were not able to communicate about contact arrangements, leaving children responsible for any communication between parents. In other cases, women described feeling unable to change their telephone number because one of their children was living with their father. Women felt that that they had to keep the same telephone numbers and thus lines for communication with their children open despite the abuse that they were subjected to. Not doing so was seen to make it more difficult to have a future relationship with their child. In the extract below, Anna describes the text messages she receives from her husband and how her husband uses her son in these messages to inflict specific hurt:

Anna: But em I don't tend to get much hassle from him it's just mostly text messages I get a lot of grief by text messages. And sometimes I don't get anything so.

Fiona: Can I ask what he texts?

Anna: Just that I am a whore and I sleep with this one and the next one. And that I am an unfit mother, nobody likes me, my family don't like me. Ach just...

Fiona: That's really nasty stuff.

Anna: Yeah really really nasty. Yeah. So the latest one is your son doesn't like me, my son hates me. And I know that's not true. I know that's not true you know. Ray (son) is in a difficult situation you know. By em there is nothing that Ray could hate me for. You know the beginning of the year he is standing in between us so you know.

At the beginning of the extract, Anna downplays the abuse that her husband carries out. When asked for more detail, she talks about the ways in which he smears and maligns her; all of which are acutely gendered. Calling Anna "a whore" and "an unfit mother" are specific attacks on her as a woman and mother. The most recent text messages about her son appear as deliberate attempts by Anna's husband to hurt her. Anna's repetition of 'that's not true' and reference to how her son intervened during assaults, suggests Anna is trying to convince herself that her son could not hate her. The lack of contact that Anna has with her son and these text messages cast doubt over the relationship Anna has with her child. The text messages epitomise the damage that her husband has been able to inflict on Anna post-separation without violence.

This section has highlighted how domestic abuse continues following separation. It has shown how children provide may provide men with a 'legitimate' reason for remaining in the lives of women, or a reason why some women continue to have some sort of relationship or at least communication with men. However, this may be manipulated by some men and used as a opportunity to continue to abuse women.

3 Child contact

The following section discusses experiences of contact. During interviews, I actively sought both positive and negative experiences of contact. However the experiences of children and mothers were characterised as being overwhelmingly negative. As

described in *Chapter Six*, there were some children who described enjoying spending time with siblings and the opportunities contact have them to reconnect with other aspects of their lives. There were also a few children who described seeing their father and enjoying doing particular activities with him. Nonetheless, the overall tone of contact experiences across the families was of difficulty and of on-going conflict. The salience of this tone is reflected in the discussion of the findings.

3.1 Contact handovers

Contact handovers were often difficult. Women in particular reported as being apprehensive about seeing their ex-partner. In the extract below, Jane describes the anxiety she experiences before her husband picks her son up:

That's 11.50, I'm through and I'm looking for when's his dad coming round, why can I not just wait and either hear a car horn tooting or a, why is this, why has he still got this control? Why has he got this control? And I try to stop myself, very hard.

Apprehension before handovers was repeated in many other interviews. When fathers picked their children up from their homes for contact, women would often stay inside so as to avoid them. This was often a direct result of ex-partner's previous behaviour at handovers. Lucy describes how, following previous verbal abuse at handovers, she and her two older sons ensured that they are indoors when her husband picks up her, daughter, Hannah for contact:

Shouting and stuff, but that was a while ago, that's stopped. I just make sure I don't go out there when he's there. That disgusts me as well. When we know he's coming, the boys and me, we all have to stay in. Why should we? And that's like why I am Hannah when is your dad coming? I need to know when he is coming so none of us are about. Do you know what I mean? Cos he's just going to cause a scene. But then sometimes he just goes to the shops.

Lucy identifies that she and her other children have to stay indoors as "disgusting". Why should she and her other children have to stay inside to limit the possibility that her husband will "cause a scene"? Why are they responsible for trying to contain his abuse? She feels that it is unfair that their lives are intruded and infringed upon in

this way. This, and Lucy's subsequent feelings of injustice are amplified by the fact she does not know when her ex-partner will arrive for contact and that sometimes he will not even come to her house but will wait for his daughter at the shops. This means that the length of time they will have to stay indoors is unknown and that sometimes staying inside is pointless.

This experience also shows how the dynamic of parental relationships may mean that children and their contact may become drawn into parental conflict. It is evident that the relationship between Lucy and her ex-partner is fraught. However, his continued involvement in Hannah's life means that he still affects Lucy's life. In avoiding her ex-partner because of his behaviour, Hannah has become the only means that Lucy can find out about contact. This has implications for the relationship between Hannah and Lucy.

During interviews there were many examples of handovers for contact being a particular outlet for domestic abuse. Danielle described an incident that took place after her children returned from contact:

And then he started shouting and swearing and I thought no. I went and shut the door. I said this is my house, you are not going to stand at my door balling and effing and swearing and all the rest of it. I don't have to listen to that. And I went to shut the door and he put his foot in and he put his finger in my face. And he said the next time I fucking see you, I'll fucking leather you. And the four boys were sitting on the bottom of the stairs. So em I got him out. I shut the door. And he battered a few things in the garden as he went.

This sort of incident was typical across the majority of interviews with women. Children routinely witnessed their father shout, swear at, and threaten their mother. A few women also described their partner attempting to and in some cases succeeding in assaulting them during contact handovers. In the extract, below Nicola describes how her husband tried to assault her after she dropped her daughters for overnight contact with their father:

And I was standing at the living room door at the time and he was sitting on the couch, and he started screaming at me, all this abuse and he just got up off

the couch and went like that and took a run at me, and I just turned and run out the door.

Nicola did not call the police after running out the door. She did call her daughters to make sure that they were all right and that their father had not turned his abuse towards them. After they reassured her that they were safe, Nicola returned to the refuge. The attempted assault did not interrupt contact. It seemed that domestic abuse was so unremarkable in Nicola's life that it taking place during contact was not surprising and did not give cause to involve the police or remove the children from the situation.

To limit the potential for further abuse, several (7) women had tried to use a third party for handovers. In some cases, this was a family member or friend, while in others cases contact centres were used. In all of these cases this was not a sustainable solution to problems surrounding contact. Family members and friends often withdrew from facilitating contact because men's behaviour became so serious and frightening. In Sophie's case, her family had withdrawn from facilitating contact because her husband had threatened everyone who had agreed to be a third party for contact handovers. This meant Sophie had to take and pick her children up from contact, which compromised her own safety:

He was getting a lot of contact over Christmas, and on Christmas night when I went to swap kids over, because his behaviour had been so bad, I had nobody that was willing to be a third party. At this point we had run out, because he was threatening my family and was threatening my parents, my sister, my auntie. So there was nobody.

When Sophie went to drop off her children her husband said that he would return them later than agreed. This led to an argument, which ultimately led to Sophie being assaulted by her husband in front of her children. Her husband was subsequently arrested and charged. This led to a temporary interruption to contact. Sophie stopped her children from going to contact and sought legal advice. However, contact resumed after the court became involved in the dispute.

In the extract below, Jennifer describes how after court involvement, contact was ordered to take place with her ex-partner's family involved in the children's handover from one parent to the other. Having her ex-partner's family involved was likely envisaged to be a 'neutral' way for handovers to take place. However this did not prevent Jennifer's ex-partner from using handovers to continue to be abusive towards Jennifer in the presence of their children.

Then we went to court and we tried to do it through court, with his family being involved in the handover. That didn't work either, because he wouldn't even listen to his own family. They would try and keep in the house away from me, and he would always come running out, shouting and bawling. All that had to be witnessed, all the, it was just ridiculous; I always had to have somebody with me, when I got them dropped off, to witness these things.

Jennifer draws attention to the measures that were in place for her children to have a continued relationship with their father. A third party was deemed necessary (although was clearly not effective) in preventing her ex-partner from further abusing her at contact handovers. The third party was not capable of protecting children from continued exposure to domestic abuse. Jennifer's ex-partner overcame his family's attempts to prevent him from "shouting and bawling" at her. She had to have someone with her to witness any abuse that her partner carried out at contact.

Both Sophie and Jennifer's experiences highlight the limitations of some of the measures used to protect women and children from domestic abuse. The use of third parties for contact handovers aims to keep parents apart and therefore end domestic abuse. However, as these accounts reveal, men's behaviour towards third parties may mean that handover arrangements may not be sustainable, while men may find ways to continue to abuse their ex-partners in spite of the presence of third parties. Connections may be made with Morrison and Wasoff's (2012) critique of contact centres for cases of domestic abuse. They argue that measures like contact centres do not address the underlying reason why a third party is needed for contact. As they do not address men's abusive behaviour, it is unsurprising that domestic abuse continues outwith or following a degree of supervision during contact.

These ideas were apparent in a later extract from Sophie's interview. Here she reflects on the requirement that contact handovers take place at a contact centre:

.. he's abiding by every rule that they are putting on him. I think, as soon as his monitoring is ended, I imagine there will be problems

Sophie's comments underline that, while measures that monitor men's behaviour may restrict opportunities for domestic abuse to occur, these measures do not 'change' abusive men. Sophie's view is that once the protective measures put in place by the court for contact end, the abuse will start again. This corresponds with findings from Morrison and Wasoff (2012). They argue that measures like contact centres are viewed as temporary. However, the lack of any intervention to address why such protective measures are required in the first instance means that a construction of contact centres or third parties as temporary demonstrates a degree of unfounded optimism.

During interviews, children provided less detail than women about the abuse that occurred at handovers. As noted in *Chapter Four*, some children were less likely to frame domestic abuse in such defined terms of responsibility as their mothers. They alluded to fighting or shouting between their parents at handovers. Michael was an exception to this. In the extract below he describes how she finds her father's verbal abuse upsetting:

Michael: Yeah. Cos sometimes when, sometimes my dad says sometimes my dad says not very nice things to my mum when I am going in my dad's car which makes me feel upset.

Fiona: Can you tell me what he said?

Michael: He said my mum was an idiot. And it made my mum feel upset when she was going home.

Michael's account shows how children may witness domestic abuse at handovers. His quotation also demonstrates how witnessing this has negative impacts on him. Like other children, Michael was also sensitive to the impact that verbal abuse has on his mother. The finding that many children did not define or articulate their

experiences of witnessing post-separation abuse in terms of responsibility demonstrates that it may be confusing for children. Or that children's perspectives may differ from those of their mothers. Regardless, it reiterates the importance of contextualising children's views.

3.2 Denigrating women to children during contact

Interviews from both children and women revealed that men would routinely speak negatively about women to children during contact. Helen, for example, described some of the things that her ex-husband said to her daughter during contact:

Basically what he's saying to Maria. That eh, I had pushed him to doing all these things. I had men, lots of men. Not once did I you know that I wish I had. Just my whole family is psychos. That I stole from him. Anything he could badmouth me about. I didn't care about them I was too busy with my other men....Cos he told them [Maria and her brothers] I took up a place at Women's Aid from somebody else who deserved it. Anything bad he could say he would say.

From Helen's account it seems that her husband is attempting to present himself as the victim to his daughter. He does not take any responsibility for the abuse he carried out, instead blaming Helen for 'pushing him' to do it. Her husband claims that it was Helen's fault he was abusive and, he further argues that she took a refuge space that was "deserved" by other women. His claim that Helen had many affairs is used to garner sympathy from his daughter. This concocted story about Helen's infidelity is used strategically to give Maria an example of how her mother did not care about her father, her brothers or even her.

Helen also provided examples of the less subtle ways in which her ex-husband badmouthed her. In the quotation below, Helen illustrates the more blatant ways her ex-husband would speak negatively about her during contact:

I mean sometime she'll come back and say for an hours he was speaking about you and how bad you are. And the night he dropped her off at the shops when she was meant to be over night, she had the whole journey up from

Aberdeen with him going he wishes I was dead, how much he hated me and she came in crying.

Given how tightly entwined children can be in domestic abuse and that domestic abuse continues after separation, it is not surprising to learn that children continue to be affected by domestic abuse post-separation. However, this seems very acute when we reflect on Maria's experience. According to her mother's account, Maria was in the car with her father and was forced to hear him say he wished her mother was dead and that he hated her mother over and over again. Helen's account demonstrates how pernicious domestic abuse can be.

3.3 Using children's contact as a means to attempt to reassert control

A number of children and mothers provided examples of behaviour that raised questions about fathers' motivations for contact. They described how fathers would ask children about women's lives, where they worked and whether they had new partners. There were a number of children who expressed upset that their fathers used contact to try to ascertain where they now lived. This occurred when women and children lived in refuges and other circumstances where men were not permitted to know where they lived because of the risks this might pose. There were a few examples where men attempted to have children persuade their mothers to accompany them on contact visits with their fathers. Some mothers went along with this, as they were concerned about contact and the impact it had on their children. These women described being in the unenviable position of knowing what their ex-partner was capable of and knowing that if they were not present during contact they were not able to protect their children.

In Anna's case, her ex-partner wanted her to stay overnight with her child. From her perspective this was his attempt to use contact to reconcile with her. As discussed in *Chapter Four*, children's views of contact were influenced by whether they saw their fathers motivations for contact as being concerned with them or their relationship with their mothers

Women in particular constructed men's behaviour towards contact as an attempt to control their time. For instance, some men would be inconsistent about the times they picked up or dropped children off, or would cancel arrangements at short notice. This meant that when contact was taking place, some women felt they were unable to leave their home in case their children were returned earlier than arrangements had dictated. There were also examples where men would refuse to have all their children at the same time during contact visits. Some women viewed this as attempts to ensure that they always had a child with them and therefore limit what women might be able to do during contact visits.

This section has discussed how children's contact with fathers often became a place for abuse to continue. It has shown how abuse may range from overt physical violence, to using contact to undermine the mother child relationship, and more subtle ways of using contact to attempt to assert control over women. It has also evidenced that children were often central to this.

4 The quality of the relationship between parents

A significant problem for children's contact stemmed from the quality of the relationship that existed between parents. As discussed earlier, some women had stopped all means of communication in order to limit the abuse men carried out. None of the children's parents had relationships where they spoke with one another or shared information about the parts of their lives that affected the children they had in common. This is exemplified by the findings in *Chapter Four's* concerning children being 'confronted' by their father's new partners without warning during contact. Parents' disputes and disagreements filtered into the contact that children had with their fathers. The absence of communication between parents meant that children were required to act as messengers to both mothers and fathers. As *Chapter Five* reported, some children asked their fathers for money on their mothers' behalf. Other children passed their fathers' messages about changes in contact arrangements to mothers.

There were further examples of how this absence of communication between parents meant that children were left with what might be described as ‘adult’ responsibilities. Both Leo’s mother (Freya) and his father had new partners. While this had not been problematic initially, his father’s reaction to learning that his mother’s new partner was moving in with Leo and his mother has had negative consequences for Leo:

Freya: His father phoned him, we were moving stuff from Ally’s (new partner). And he said where you are and he must have said Ally’s. And he said why are you there and he went, ‘Ally is moving in’ and he said ‘Is that you got a new daddy now?’

As Leo’s parents did not speak to one another, his father learned that Ally was moving in from his contact with Leo. His reaction to this was to ask Leo whether he had been replaced, whether he had a new daddy. Whether intentional or not, this was a hurtful question and one that placed Leo in a position where he is caught between loyalty towards his father or his mother. From Leo’s interview, it was clear that his father continues to be angry and upset that Ally lives with Leo. During contact he makes unfavourable comparisons between how he has managed his relationship with his new partner and his relationship with Leo, and how his mother has managed Ally’s introduction to Leo’s life. Leo’s father tells him that he will not introduce him to his new partner as he has enough to contend with because of his mother’s new relationship. While it may appear to Leo that his father is trying to protect him, his statements are made alongside unfavourable comparisons to Leo’s mother’s new relationship. Leo’s father infers that, unlike Leo’s mother, he is prioritising Leo above his relationship with his new partner. Instead of protecting Leo, his father uses his mother’s new relationship to denigrate his mother and undermine the relationship Leo has with his mother.

4.1 Fathers’ hostility towards mothers during contact

Interviews with children and mothers revealed that fathers were often hostile towards mothers during contact. As well as the denigrating of mothers described earlier in this chapter, some fathers were angered if children mentioned their mothers. In Luke’s case, his father made a rule that he and his brothers were not allowed to

mention her name during contact. Children often spoke about missing their mother during contact visits. In some cases this was despite having contact arrangements in place for a considerable period of time. Younger children in particular wanted to talk with their mother during contact visits. However there were several cases where fathers prevented children from doing so. For example, Josh's father refused to allow him to speak to his mother during overnight contact visits. Josh's mother Alice gave him a mobile phone so that he could phone her independently of his father during contact visits. When Josh's father discovered this, he took the phone from him and did not return it.

A further example of this is given by Jane who describes how her husband also prevented her daughter Lisa from talking to her during a contact visit:

Jane: He's said a lot of nasty things to Lisa when she went out. Like I'd drop her off and he said, 'You know your mum's not coming back for you. Your mum's away with all these different men'. And I wasn't, I was coming back here [to the refuge] and he said all these nasty things to her and she asked him to phone me, he wouldn't phone me.

This extract is especially disturbing if we consider the following: Lisa had been living in a refuge because of her father's severe violence towards her mother. This occurred on the first overnight contact visit she had with her father since her parents' separation. She had no experience of contact visits where her mother had returned for her. Lisa had to spend the night with her father not knowing whether her mother would return or not.

Not allowing children to speak with their mother during contact was also difficult for women. Women had been the primary carers of their children and had rarely been apart from them. They were unable to 'check in' with their children or be reassured that they were happy and safe. Women had to simply hope that their children were safe and happy with someone who had been abusive towards them and in some cases directly abusive towards their children.

In some cases, as well as preventing children from contacting their mother, fathers refused to share telephone numbers with mothers. Mary's ex-partner refused her offer of a contact number for her when he had contact with their children:

Mary: I went out of my way to get a mobile phone with a like, a prepaid card, so I could give a number to give to him in case there was any problems. Because you have to do that kind of thing, because you just never know. But he refused to take it. 'I don't need it, if there is any problems, I am their dad, I'll deal with it.'

Mary had tried to ensure that she and her ex-partner would be able to communicate about contact and any problems that might arise. It demonstrates a complete breakdown in relations between the parents. Mary's ex-partner does not want her to have any involvement in his contact with their children regardless of the circumstances.

Similarly, Annabelle's ex-partner refused to provide her with a number that she could use to get in touch with Ross during contact visits. Annabelle's quote below illustrates the fears that some women have about contact and how not being able to call their children can amplify these.

Annabelle: But I worry about him (Ross); I don't know what their plans are. But in 24 hours the child could be killed. In 24 hours the child could be abused and broken in the hospital. I have got no phone number; I have got no one to call. I don't know where the hell he is.

Annabelle is scared that her son will be hurt or even killed during a contact visit. Not knowing where he is or how to get in touch with him is terrifying for her. We do not know what motivated fathers to prevent children from speaking with mothers during contact or why they would not share telephone numbers with mothers. Perhaps they felt contact was their time with their children and did not want mothers to intrude on this. Perhaps they wanted to punish their ex-partners and this was a means to do so. Regardless of the motivation, what was clear from the interviews was that this was distressing to both children and their mothers. This level of fathers' hostility towards child-mother relationships is concerning when we consider the research evidence

about conflict between separated parents and the subsequent outcomes for children (e.g. McIntosh et al 2011). The benefits of contact where fathers purposely prevent children disrupt the relationship between mothers and children are questionable. Children were sensitive to this level of animosity, casting doubt over how this contributed to children's best interests.

5 Conclusion

This chapter has reported on how domestic abuse may continue following parental separation. The majority of women described being harassed by their ex-partners. This was connected to contact arrangements but also occurred outwith these. Children witnessed post-separation abuse and were often upset by it. The enduring nature of domestic abuse was evident in the unpredictability of harassment carried out by men. The findings demonstrate how domestic abuse crosses social space. The expanding list of locations where abuse occurred, and the methods that were used to abuse, meant that for some women domestic abuse was omnipresent. They were unable to 'switch off' from domestic abuse, and needed to maintain constant vigilance.

As other research reports, contact handovers were often a flash point for domestic abuse. Men were verbally and physically abusive at handovers for contact. Many children witnessed this and some had provided evidence to the police about it. Consequently some women actively avoided meeting fathers at handovers. Some stayed inside their houses when fathers collected children. Others organised third parties for contact handovers. Third party arrangements were often unsustainable or ineffective. Contact centres were seen as a temporary measure, not a long-term solution to contact. Family members and friends often refused to continue to act as a third party because of men's continued aggressive behaviour. This left women again responsible for contact handovers and negotiating with men.

Children's contact and children themselves can become the focus for continued abuse. This is because children are the focus of any interaction between men and

women. During contact fathers often spoke negatively to children about their mothers. There were examples where men used contact to control women's time. These findings concur with the existing literature on child contact and domestic abuse.

New contributions are made to the literature about how parental co-operation and the on-going consequences of domestic abuse in parental relationships may frame children's experiences of contact. The quality of relationship between parents made contact difficult at times for children. An absence of communication between parents meant that contact was often where children and fathers learned about changes in each other's lives. Children became intermediaries between parents. This made contact stressful and made children in particular vulnerable to conflict.

Fathers often prevented children from talking to their mothers during contact visits. They refused to allow children to speak to their mothers on the telephone or tell mothers where they were going during contact. This left some children upset and distressed. It also left women worried about their children during contact.

The Children (Scotland) Act 1995 has provisions for domestic abuse and for circumstances where there are problems with parental co-operation when making contact orders. Families in this study revealed that these two issues overlap. The absence of communication and co-operation between parents adds another layer of difficulty for children. They have to navigate and negotiate the complex and charged dynamic of their parents' relationships. This has significant repercussions for children. It is questionable whether it is possible to 'force' parents to co-operate and especially whether it is acceptable to force an adult victim to co-operate with their abuser. This therefore raises more questions about the quality of contact that takes place when there is domestic abuse.

We now turn to the final chapter of this thesis and its discussion on the implications that these and other findings have for theory and policy.

Discussion and Conclusions

1 Introduction

The aim of this research was to examine children's views and experiences of contact with non-resident fathers when there is domestic abuse. The research was shaped by theory and literature on children's rights. As *Chapter 2* reports, this suggests that contact should exist and take place when it is in the interests of the child. A child's rights perspective places importance on giving the child opportunity to express a view about contact and for these views to be given due weight when making decisions about contact. Feminist perspectives on domestic abuse also influenced the research. As *Chapter 2*, reported this constructs domestic abuse to be an on-going and continuous phenomenon that involves the (usually male) perpetrator using a range of tactics used to intimidate, isolate, with the ultimate aim of dominating and controlling the (usually female) victim. Children can be both directly and indirectly affected by domestic abuse.

This chapter summarises and discusses key findings from this thesis and links these findings to the original research questions. The chapter also locates the research findings in a broader theoretical context. It does this by returning to and reflecting on the theoretical concepts of 'best interests', 'children's views' and 'conceptualisations of domestic abuse' that were highlighted and discussed in *chapter two* of the thesis. The chapter concludes by reflecting on the methodology used for the research, and points to ideas for future research in this area.

2 Key findings

This section summarises the key findings of the research in order to answer the original research questions. It also makes connections between the findings and the broader theoretical concepts that underpin the research. The two research questions '*How do children experience contact in a context of domestic abuse?*' and in '*What ways are children exposed to domestic abuse before and following separation?*' are

addressed together. This is because of the degree of overlap between these issues. This section begins by highlighting the new contributions that this research has made.

2.1 New contributions made by this research

As discussed in *Chapter Three*, there is already a body of research that links the issues of parental separation, contact and domestic abuse. Recently this research has begun to examine children's own accounts of contact when there is domestic abuse (e.g. Holt, 2013; Thiara and Gill, 2012; Mullender et al, 2002). To date the literature has tended to focus on children's views of their fathers, their analysis of his behaviour and his motivations for contact. This research adds to this existing literature and makes a new contribution to this body of knowledge in two ways. First, it has explored in greater depth the context in which children's views are formed through its close consideration of how the circumstances surrounding that separation (that may well be connected to domestic abuse) affect children's views. Second, it has considered explicitly how contact affects children's wider social relationships, and in doing so uncovered how contact represents more than a continued relationship with a father.

Chapter Two provided insight into the contested nature of children's participation in family law. This research has been unique in its Scottish socio-legal focus of children, contact and domestic abuse. It has demonstrated how complex children's participation in this context may be. Findings about the limitations of current mechanisms, like court reporters, are a particular example of this.

The final area that this research has made a substantive contribution to relates to how domestic abuse is conceptualised as was discussed in *Chapter Three*. It has confirmed other research findings about what domestic abuse is and how it is experienced by women and children (e.g. Stark, 2007). It has also confirmed other research that has found that the ending of relationships does not translate into the ending of domestic abuse (e.g. Stanley et al, 2012 and Brownridge, 2006). The research has made a new contribution to this area through its analysis of the on-going

relational consequences of domestic abuse. It has demonstrated how these may be witnessed in post-separation parenting arrangements and raised questions about the implications this has for the ideas of parental co-operation and children's best interests. This section now reflects on how this research has answered the original research questions.

2.2 What influences children's views on contact with non-resident fathers?

Chapter six revealed that children held diverse views about the contact with their fathers. Views were shaped by children's particular circumstances, relationships and personalities. Some children held and articulated strong views about contact. Other children were more ambivalent and provided less resolute views about contact.

Domestic abuse was a core issue for many of the children. However, the nature or extent of children's exposure to domestic abuse did not affect children's views about contact in a uniform way. Some children viewed their fathers' historic and current domestic abuse as an explanation for why contact was problematic and in some cases unwanted. Other children continued to want contact with their fathers, despite having witnessing extreme violence or being attacked themselves during contact

Even when children held views against contact, this did not correspond to a complete severance of the attachments they had to their father. Children reported missing their father and feeling sad about the absence of a relationship with him. One interpretation of this might be that children feel obliged 'to be seen' to love or have at least some positive feelings towards their father. These obligations may make it difficult for some children to express entirely negative feelings about a parent even when that parent is abusive.

Children's analysis or conceptualisations of domestic abuse did not always correlate with their mothers or with feminist perspectives of domestic abuse. Some children did not construct their father as responsible for domestic abuse. They attempted to equalize responsibility amongst their parents and in some cases blamed their mother

for provoking the abuse. This might be interpreted as a means by which children ‘defend’ what are perhaps unpopular views in favour of contact. Children’s understanding of the reasons for their parents’ separation also influenced views about contact. This highlights the importance of and raises questions about how children’s views are contextualised when making decisions about contact when there is domestic abuse.

As other research has found, children considered and took account of the views, experiences and feelings of others when they formed views about contact. In the context of domestic abuse, some children considered the impact abuse had on their mothers when they formed their views. In other cases, children also considered that their fathers might have felt sad about their separation. Children were also sensitive to what they perceived as their fathers’ motivations for contact. Some children questioned whether fathers’ were motivated by a desire to have relationship with them, or by a desire to stay connected to their mothers and find out about their lives. Wider family members and their reactions and responses to parental separation and domestic abuse also influenced how children viewed contact. A preoccupation with how others might feel or react to children’s views presented an additional layer of difficulty for some children when it came to articulate their views about contact. Some children were so concerned about ‘being fair’ to both parents that they struggled to express a clear view as to what they wanted to happen with contact.

As a legal concept, child contact is concerned with the maintaining and continuing the relationship between the child and non-resident parent. However children reveal that contact is intrinsic not only to the relationship they have with their father but can be intrinsic to other dimensions of their lives. As well as signalling changes to children’s relationships with their fathers, parental separation also signalled changes to other aspects of their lives. Children’s views about contact were often imbued by these changes and the potential that contact had to mediate them. The majority of children were made homeless as a result of the ending of their parents’ relationship. As well as adjusting to no longer living with their father, children also had to adjust to living somewhere different. This meant that contact often represented an

opportunity to reconnect with familiar parts of children's lives. This was important to children and in some cases was the predominant reason why they wanted contact to take place with their fathers. Furthermore, parental separation also led to some siblings living apart. This meant the continuation of siblings' relationships was contingent on contact taking place. Contact with fathers became a particularly pressing issue for children where contact between mothers and children who lived with fathers had broken down. In these cases, if children did not have contact with their fathers, they also did not have contact with their siblings. This corresponds with findings from other research.

Children did not readily extend their expanded understanding of what contact can represent to accommodate the new relationships that fathers had embarked upon since parental separation. In most cases, children viewed fathers' new partners and stepchildren negatively. Children constructed these new relationships as disturbances to or distractions from the contact that took place between them and their fathers. This was exacerbated by the way in which children were often confronted by these relationships without warning during contact. Children often felt that fathers expected them to accept these new relationships and for these to be part of the contact they had. Some children actively resisted this, expressing negative views about their fathers' new relationships and linking these to the negative views about contact they offered to their mothers and to the court.

Broader theoretical and policy implications

These findings have implications for how children's views are conceptualised in family law. As Tisdall and Morrison (2012: 171) argue, children's views are 'contextually dependent'. This is underlined by the breadth of issues that children considered when discussing contact and the particular attention children paid to the impact that their views might have on others, and on their wider relationships. As a legal concept, contact has a narrow focus, focussing primarily on the relationship between the child and non-resident parent. However, as children's accounts demonstrate, parental separation does not only affect the relationship between the child and non-resident parent. Parental separation and domestic abuse have ripple

effects which impact on other aspects of children's lives: affecting where they live, the school they attend and their friendships. Contact may also have positive and negative repercussions for individuals and relationships beyond that of the child and non-resident parent; it may impact on the resident parent, siblings and the child's wider family. Children's views were shaped by and linked to these people and the interactions that contact had with them. At different times and in different circumstances, these different factors may exert positive and negative influences on views about contact.

This all raises questions about how children's views are considered when weighing their best interests and the efficacy of methods used to collect them. When considering the views of the child, the context and the reasons that underpin these views are important and may offer insight into the child's circumstances. Mantle et al (2006) problematize constructions of children's (or indeed adults') views that are fixed or definite. Findings from this research have shown how contingent and dynamic children's views might be. It is questionable whether current legal mechanisms designed to gather children's views adequately enquire about this. Or how the court then reconciles or contextualises views about contact that may be influenced by other issues and shaped by children's predictions of how others might react or behave. Certainly mechanisms that have a narrow focus on whether or not children want contact or not risk overlooking the strategic weighing that children undertake when forming views about contact. This information may provide courts with further insight and in some cases may make children's views more persuasive to the court. However, emphasising the context of children's views in a court's consideration does present dilemmas. There may be risks that the substance of children's views is obscured or undermined by an adult preoccupation with issues that might influence a child's views. If courts become more open to hearing a full account of children's views, this must be balanced by the courts obligation to attach due weight to these views.

Some children's views about contact may lend themselves to particular legal constructions of children and childhood. For instance, ideas about the vulnerable or

manipulated child may emerge when we consider some children's analysis of domestic abuse or the difficulties some children have in expressing a view about contact. Is a child who 'sides' with an abusive father competent to form a view about contact? Is a child who worries about how contact might affect her mother influenced by parental pressure or manipulated? What about a child who does not express clear views? How should a court deal with children's views in these circumstances? In law, it is for the Sheriff to decide how much weight to attach to the child's views when weighing a child's best interests. Thus, a decision that is contrary to a child's views or is made in absence of a child's views may be made.

However, making a decision does not necessarily change or resolve any conflict between a contact order and the child's views. The impacts of decisions made in such circumstances are also unclear. This is particularly problematic when we consider that contact arrangements are not routinely subject to review or monitoring. While on-going state intrusion to the lives of children whose parents have separated may be undesirable, cases where there are concerns about safety or the impact contact may have on children's emotional wellbeing may benefit from such review.

There may also be merit in extending such reviews to orders that are made contrary to children's views or in cases when children's views are unclear. Such a review would include seeking children's views about contact and the impact it had more generally to other aspects of their lives as well as other relationships. Parties can of course make new applications to courts about contact should they be concerned about orders that are in place. However, as was the case with families in this study, new applications have the potential to further entrench conflict and disputes between parents and children. A review that was instigated by the court rather than by a parent has the potential to limit the adversarial nature of disputes.

2.3 What perspectives do children have on participating in parental disputes about contact?

Chapter seven reported that all children had intricate contact histories. Across families who had resorted to court and those who had not, there were histories of

interruptions to contact, as well as parental arguments about contact and, in many cases, repeated legal disputes about contact. When contact had been interrupted, children were often unaware or did not understand the reasons for this. Where women instigated these suspensions in contact they often attributed them to further abuse or directly to children's reaction or resistance to contact, thus highlighting how children consciously and unconsciously participated in the ending of contact arrangements.

Although children who had informal contact arrangements were not routinely or formally asked their views about contact, this did not mean that they were passive or silent in the arrangements. A few older children, not bound by court orders, made their own contact arrangements with their father. This sort of participation occurred in and filled a void created by an absence of communication between mothers and fathers. In this context, children's high level of involvement in decision-making meant that children had to negotiate with and mediate between both parents. This demanded that children not only assert their views about contact but also managed and coped with the hostility and anger that parents had towards one another.

Children whose contact arrangements were subject to legal orders had their views elicited by various mechanisms during proceedings. However, as with other research, children's views in legal disputes about contact were most frequently collected by a court reporter. Only one child recalled completing an F9 form, and this child was the only who had attempted to become a party to the dispute. One child met with a Sheriff and conveyed his views directly to him. The overlapping role of the court reporter to investigate a child's interests and take the child's views was found to be problematic in a number of cases. This was evident when a court reporter facilitated or 'forced' contact between children and fathers in a context where the child had expressed views against contact. Other problems about the role and purpose of court reporters were apparent in descriptions of court reporters 'coercing' children to agree to contact when seeking their views. These findings question whether having a role where they both investigate children's interests and take children's views is appropriate. They also question the practice of some court reporters and what court

reporters perceive their role to be. Is their purpose to make contact happen, to report on the child's circumstances, to represent the child's views, or some combination of these?

Children considered it important that their views were part of the contact decisions made by adults. However, some children queried the legal distinction between children's best interests and children's views. There were differences between children about the influence they wanted their views to carry, in decisions about contact. In general, children wanted their views to inform the decision but did not want sole responsibility for making a decision about contact. Children with contact arrangements that did not reflect their views were more likely to want their views to have greater influence than other children. Some children were keen to have influence on particular issues; for instance, the timing or location of contact. However, where these issues were subject to dispute by parents, children were less likely to want 'to have a say' on them. Children were wary of participating in decisions that might contribute to further conflict between their parents.

Findings also highlighted tensions reported in the literature about children's participation in family law. Some mothers questioned children's competence to provide an 'informed' view about contact. This was connected to children's partial knowledge about the extent of their fathers' abuse and whether children were fully appreciative of the risk that contact posed. A further tension related to whether children's participation in decisions about contact meant that they became more involved in their parents' disputes than they might have been otherwise. Children's participation in disputes meant they were aware of court proceedings taking place. However they relied upon their parents to provide information about any progress made by the court. This meant they received filtered information that was framed to suit a particular parent's perspective.

Children provided critical accounts of the legal mechanisms that sought their views. These accounts raised questions as to whether these mechanisms were sensitive to the difficult and contradictory views and feelings that children may have about

contact. The lack of preparation or warning that children's views were to be taken by a court reporter was highlighted as problematic. Children were not provided with an opportunity to consider their views or reflect on their implications before giving them.

The importance of relationships and trust when children are asked views about contact was also highlighted. The absence of any pre-existing relationship between children and court reporters acted as a barrier for some children's participation. The appropriateness of schools as a location for views to be sought was also questioned. While this may be seen to be a neutral venue, it is not one where children are encouraged to speak frankly or negatively about their parents. Furthermore, a teacher may not be fully aware of a child's circumstances, which may in turn prohibit a child from expressing views about contact when there is domestic abuse. The issue of whether children's views are treated confidentially in court processes was significant for children. This was central to whether they felt able to express their views. Children's concern that their parents may discover their views and react badly to them was a barrier to participation.

Broader theoretical and policy implications

These findings show that as well as utilising the legal mechanisms designed to collect children's views, some children also participate directly in decisions about and arrangements for contact. They may negotiate their own contact arrangements and their resistance to contact may lead to the termination of contact arrangements. Children's levels of participation in these cases is perhaps greater than participation they have in legal disputes about contact. While it may be argued that children exercise more autonomy in some of these cases, the findings also show that children are not necessarily afforded the 'protective' elements of participation that formal legal disputes provide. Children's views have to be conveyed directly to a parent without the safeguard of confidentiality. Children must also contend with the direct repercussions of their views not being in consistent with those of one or both parents. This sort of participation perhaps leaves children more vulnerable to parental pressure and certainly more vulnerable to parental conflict. Furthermore, in a context

of domestic abuse, children's participation that excludes women may be interpreted as attempts by men to undermine women, and to undermine their role as mothers.

Questions about the respect afforded to children's views derive from the ways in which some court reporters encouraged, coerced and forced children to have contact. In some cases children's views against contact appeared to be treated as obstacles that court reporters had to overcome, rather than an important consideration in any decision about contact. What might this tell us about the assumptions that underpin court reporters' views about disputed contact? Perhaps they assume that all children will benefit from contact in the long run or that children's views are not really that important in disputes. This mirrors Eekelaar's (2002) critique of the best interests principle and his argument that children's views may be set aside in favour of what adults consider to be their future interests. Connections may be made to Trinder et al's (2010) study about in-court conciliators and their perceptions of what their purpose is. Perhaps like their English colleagues, Scottish court reporters perceive their role to be one that makes contact happen, rather than to report on the child's views or the child's circumstances. Reasons aside, the practice of some court reporters raises serious questions about whether children's views are always treated with respect during court proceedings. It also questions the desirability of court reporters playing active roles in contact arrangements or whether such a role undermines court reporters' ability to fulfil children's participation rights. This research highlights how problematic it is to have a court reporter fulfil the separate but linked responsibilities of determining children's best interests and eliciting children's views. I argue that these responsibilities need to be separated with different people being tasked with fulfilling the separate responsibilities. An appropriately trained specialist would be better placed than the court reporter to elicit children's views and enable children to express their views freely. It would also ensure that there was a clear delineation between these two issues and help to ensure that children's views and interests are not conflated.

Children's views on the influence they want their views to have in decisions about contact corresponded with other research. Authors like Cashmore et al (2008) also

report that children do not want sole responsibility for decisions but want their views to be part of the decision that is reached. However children in this study were also wary that their participation might contribute further to the dispute between their parents. This may in part be a response to the on-going nature of parental disputes amongst this group of children. They were perhaps jaded or cynical about the impact their participation had in resolving disputes. This has implications for how any on-going participation by children in disputes is addressed. It would have to consider that there might be negative impacts for children and if it were possible to negate these.

The findings add to current debates on the appropriateness of current legal mechanisms that support children's rights to participation in contact disputes. It was clear that legal requirements to provide children in the study opportunity to express a view were met. However, the quality of some children's experiences of participating was questionable. This presents difficulties for children to exercise their rights to express their views freely. As Wade and Smart (2002) have commented, legal mechanisms that facilitate children's participation are perhaps more orientated to the needs of the court than the needs of children. A poor experience of participation has negative consequence for individual children. It also limits the court's ability to access a child's views and thus limits or undermines a Sheriff's ability to make an informed decision about children's best interests.

Children's accounts point to some basic problems with current mechanisms. There was an absence of information provided directly from the court to children on the contact decisions made, the weight given to children's views as part of any decision reached, and the court's reasons for the decision made. These findings cast light on how one-sided children's experiences of participation are. Once children's views are secured, the court has no other interaction with them. Such an approach is disrespectful and appears to treat children's participation rights in way that is tokenistic.

These ideas are amplified when consideration is given to how well current mechanisms accommodate issues that children identify as barriers to expressing their views. Certainly the absence of any notice to children that their views are to be taken, or any opportunity to prepare what these views might be, may make it difficult for some children to give their views. ‘One-off’ meetings between children and court reporters as a method to secure views limits the scope for developing trusting relationships. This may constrain children’s abilities to exercise their rights to express views freely. Children’s anxiety about confidentiality evidences how fraught disputes about contact might be. It demonstrates how concerns about parents’ (both mothers and fathers) reactions may restrict or prevent children from articulating a view. This may be amplified in the context of domestic abuse. Children’s views about contact may also reveal abuse that has taken place to a third party, something which children may have been discouraged from doing in the past. Case law shows that confidentiality may be extended to children’s views during proceedings. However, the lack of guarantee that views will be treated confidentially before views are taken may prevent children from giving their views. It may also mean that the views children share with the court are incomplete or constructed by children to protect a parent, or to protect the child from a parent’s reaction.

2.4 In what ways are children exposed to domestic abuse before and following separation? And how do children experience contact in a context of domestic abuse?

Chapter five reported on the domestic abuse that had taken place before separation. It highlighted how many of the women in the study had not always categorised their ex-partner’s behaviour as domestic abuse prior to their separation. It also reported that many of the men had few or no convictions for the domestic abuse that had taken place. Much of the domestic abuse that mothers and children were subjected and exposed to occurred outwith the gaze of professionals or other third parties. This presents dilemmas about the ways in which women may approach disputes about contact when there is domestic abuse. They may not articulate their concerns about contact using the language or terminology of domestic abuse. It also presents dilemmas about how domestic abuse is raised during legal proceedings. How might

domestic abuse be fully considered by court if there is no legal recognition that domestic abuse has happened?

Women's accounts revealed that domestic abuse was on going and had been a routine part of their lives. Women lived in an environment where they expected and predicted when abuse and violence would occur.

Domestic abuse had pervasive effects on children's everyday lives. Mothers slept with children in order to limit the violence and abuse that they were subjected to. Children spent time in their bedrooms or at their friends so as to avoid their fathers. When abuse escalated, children and mothers fled their home in order to be safe.

Children were intimate witnesses to the abuse that women were subjected to. The domestic abuse carried out corresponded to contemporary ideas of coercive control. It included physical and sexual violence, as well as emotional abuse. A few children also reported that their fathers had physically assaulted them or their siblings. As Mullender et al. (2002) report, children are not passive in domestic abuse. Some fathers sought to involve their children in their abuse. They encouraged children to participate in the degradation of their mothers. Like other research, some children in this study intervened during their fathers' attacks on their mothers. Children physically intervened during assaults and sought assistance from the emergency services and neighbours. Children's views, behaviour and feelings were also influential in women's decisions to end or to remain in relationships with abusive men.

Chapter seven reported that all the children had contact with their fathers immediately after parental separation. This was often in a context where the separation had followed an attack or assault on their mothers. These contact arrangements were made directly between women and men. While children described being happy and excited about this first contact, they also described feeling worried and nervous. This was connected to children's concern about their fathers' reaction to the separation and how this might manifest during contact. These

contradictory feelings underline a key difficulty that contact has for children. While they may want to spend time with their father, his behaviour during contact may be unpredictable, abusive and distressing.

Chapter eight reported that abuse did not end following parental separation. Levels and severity of abuse varied across families. All of women described being harassed by their ex-partners. This was connected to contact arrangements but also occurred outwith these. Some men attended places like schools, nurseries and children's clubs at times that women and children were likely to be there. This provided opportunity for men to verbally abuse and intimidate women. Children witnessed this and were often upset by it. The enduring nature of domestic abuse was evident in the unpredictability of harassment carried out by men. Women received harassing and abusive telephone calls, text messages and emails. Some men attempted to assert their control over their ex-partners by disrupting women's employment and education. Men intruded in and made attempts to restrict or restrain women's lives. This demonstrates how domestic abuse crosses social space. The expanding list of locations where abuse occurred, and methods used to abuse, meant that for some women domestic abuse was omnipresent. They were unable to 'switch off' from domestic abuse, and needed to maintain constant vigilance.

In some cases children's on-going relationships with their fathers meant it was difficult for women to end all relations with their ex-partners. They were unable to change their telephone number or refuse to speak to their ex-partners. The requirement for women to communicate and co-operate with men was especially marked if one of the children had decided to live with their father. Women described being unable to end communication with men, as the relationship with their non-resident children depended upon parental communication taking place. This shows how children can be central to the continuation of post-separation abuse.

As other research reports, contact handovers were often a flash point for domestic abuse. Men were verbally and physical abusive at handovers for contact. Many children witnessed this and some had provided evidence to the police about it.

Consequently some women actively avoided meeting fathers at handovers. Some stayed inside their houses when fathers collected children. Others organised third parties for contact handovers. Third party arrangements were often unsustainable or ineffective. Contact centres were seen as a temporary measure, not a long-term solution to contact. Family members and friends often refused to continue to act as third party because of men's continued aggressive behaviour. This left women again responsible for contact handovers and negotiating with men.

Chapter five showed how tightly entwined children can be in domestic abuse pre-separation. *Chapter eight* shows how children's contact and therefore children can become the focus for continued abuse. This is because children are the focus of any interaction between men and women. During contact, fathers often spoke negatively to children about their mothers. Women constructed this as a strategic attempt to undermine their relationship with their children. There were examples where men used contact to control women's time. Some men refused to take all their children on contact visits, meaning that some women always had at least one child with her. Other men were inconsistent about when children were returned home from contact. This meant women felt they had to stay at home during contact in case the children returned early. There were a few men who wanted women to come on contact visits with their children.

The quality of relationship between parents made contact difficult at times for children. An absence of communication between parents meant that contact was often where children and fathers learned about changes in each other's lives. Children became intermediaries between parents. They passed on information about changes in living arrangements or parents' new partners. This made contact stressful and made children in particular vulnerable to conflict.

Fathers often prevented children from talking to their mothers during contact visits. They refused to allow children to speak to their mothers on the telephone or tell mothers where they were going during contact. This left some children upset and distressed. It also left women worried about their children during contact.

Broader theoretical and policy implications

These findings confirm feminist perspectives on domestic abuse. They correspond with Stark's (2007) and Johnson's (1995) theories about what domestic abuse is and the effects it has that were discussed in *Chapter two* of the thesis. The accounts of women, and to a lesser extent the accounts of children, reveal that domestic abuse is an on going phenomenon. The effects of domestic abuse extend beyond that of particular incidents of violence. They are cumulative and have far-reaching effects on the lives of victims'.

The research demonstrated how entwined and central children may be to men's abuse of women, confirming the ideas of Mullender et al (2002) and McGee (2002). Children are intimate witnesses to abuse that takes place. However children should not be constructed as passive witnesses in domestic abuse. They may be encouraged to participate in the abuse of their mothers. Children can also be targets for their fathers' abuse. As the research reported, children may exert influence over their mothers' decisions to end or continue their relationships with fathers. Children might also take action to protect their mothers from their fathers' abuse.

The review of case law highlights how during proofs, courts focus on particular incidents of violence or abuse. They tend not to undertake any analysis of the dynamics of the relationship. This risks overlooking and downplaying the domestic abuse that women and children have been exposed to. It does not consider the ways in which coercive control operates and the impact it has on victims' lives.

Whether women define their partners' behaviour as domestic abuse or not is important. It has implications for how women present concerns about contact to a solicitor and subsequently to the court. Women's resistance to agencies like social work and the police when living with an abusive partner may have repercussions for how abuse is evidenced and addressed in legal disputes about contact. Where contact is disputed, a more proactive legal approach might address this. If solicitors were to routinely enquire as to whether domestic abuse was an issue in cases of

contact disputes, domestic abuse might become more visible in proceedings. It would also provide an opportunity to address this when weighing a child's best interests.

These findings underline that domestic abuse does not necessarily end with separation. Children are a key reason why men and women have to interact following separation, thus children and contact arrangements become a focus for continued abuse. The varied ways in which domestic abuse continues following separation highlights how ubiquitous it can be. This may be problematic in and of itself, particularly when disputes about contact are framed by ideas of parental conflict. How seriously should a court consider a father who turns up at his child's football game without invitation or warning? On the surface this seems quite a benign event. However if connections are made to the serious violence the mother had been subjected to before separation, and the fact that the father is now not permitted to know where the mother and children live, the seemingly benign event assumes a much more serious meaning. This highlights how important a robust analysis of domestic abuse is when weighing a child's best interest.

As the review of case law revealed, findings of domestic abuse do not preclude the ordering of contact. This appears to be underpinned by an assumption that domestic abuse will not continue following separation. These findings have shown even where measures like contact centres or third party handovers are in place they do not necessarily prevent men from being abusive. As Morrison and Wasoff (2012) argue, this is because these measures do not address men's abusive behaviour. They simply restrict the places it may occur. If children are to have contact with fathers when there is domestic abuse, attention has to be paid to men's abusive behaviour and interventions that may address it. This must consider and take seriously not only physical violence, but also the low level threats and harassments that take place.

The Children (Scotland) Act 1995 has provisions for domestic abuse and for circumstances where there are problems with parental co-operation when making contact orders. Families in this study revealed that these two issues overlap. The absence of communication and co-operation between parents adds another layer of

difficulty for children. They have to navigate and negotiate the complex and charged dynamic of their parents' relationships. This has significant repercussions for children. Connections can be made between fathers' attitudes towards children during contact and ideas that children are extensions of parental property. During contact, children 'belonged' to their fathers and their mothers were not permitted to be involved in this. Children were expected to compartmentalise their lives; to 'switch off' the relationships they had with their mothers when they were with their fathers. This appeared to be fuelled by the breakdown of relations between men and women. These findings make clear how the relational consequences of domestic abuse are on-going and affect levels of parental co-operation. This was evidenced through children's contact arrangements. Legal reform to the Children (Scotland) Act 1995 provides scope for this issue to be addressed more squarely by the court. It is questionable whether it is possible to 'force' parents to co-operate and especially whether it is acceptable to force an adult victim to co-operate with their abuser. However as this research has demonstrated, if left unaddressed this is negative for children. These findings therefore raise more questions about the quality of contact that takes place when there is domestic abuse. I would argue that they suggest that the court should be more concerned and actively enquire about how this affects children's experiences of contact when there is domestic abuse. This is especially pressing due to earlier findings that families' problems with contact were chronic and not appear to resolve over time.

3 Reflecting on the methodology and ideas for future research

This section highlights some of the limitations of the methodology that was used for the research and offers directions for future research.

3.1 Reflections on methodology

Families who participated

All of the families who took part in this research were recruited via domestic abuse services. In none of the families who took part in the research were the mother and child content with the contact arrangements that were in place. Negative experiences about contact and levels of dissatisfaction may have motivated them to take part in the research. It would be useful to ‘test’ the findings from this research with a larger population. It would be important to see whether findings were similar across families who had not accessed domestic abuse services. It may be that the children and women’s experiences of abuse were particularly extreme.

‘One-off’ interviews with children

Throughout the research I tried to build rapport and relationships with children. I thought this was crucial to children feeling able to share their experiences. I am unconvinced that in all cases I was successful at achieving this. Whilst in most cases children had met me before interview, ultimately I was still an unknown person. This may have been liberating for some children: perhaps because they did not know me and we were unlikely to meet again they might have felt more able to talk frankly.

However, for some children, I think that the fact that I was a stranger made the interview difficult. I was asking children questions about their lives that they were not normally asked or encouraged to have a view about. As discussed in the findings chapters, children identified trust and relationships as critical to their ability to give their views about contact in court proceedings. The fact that interviews were ‘one off’ may have limited the depth or sorts of accounts that children were willing to share. There would be merit in considering further research with children that provided more opportunity for building trust and relationships between the child and researcher. This would perhaps involve spending more time with children and the research being carried out over a longer period of time. This would have to be balanced with not causing an unnecessary intrusion in children’s lives and ensuring that the boundaries of the researcher’s role were clear.

Including and excluding parents

As discussed throughout the methodology chapter, I have grappled with the inclusion of women in the study. Involving mothers provided an important backdrop to children's experiences. However, ensuring that mothers' accounts did not overshadow children's accounts or that the needs and experiences of children were not conflated with those of their mothers has been a challenge. Future research should consider how data collected allows children's views and experiences to be contextualised but not dominated by the accounts of adults. This is especially important if research involves research methods like interviews that adults may be more confident or used to engaging with than children.

The reasons for not involving fathers in this research were stated earlier in this thesis. I maintain that this was the right decision for this research. However, I am aware that their exclusion from the study may be seen as a weakness of the research, especially as women's contribution to the research was greater than first anticipated.

There is a need to carry out research with fathers about contact. However I am unconvinced that it would be ethical or possible to carry out research with fathers, mothers and children from the same family when contact has been disputed. Issues surrounding safety and reducing the risk of further damage to relationships caused by the research would have to be adequately addressed before this was possible.

Asking questions about domestic abuse

The research had not intended to investigate experiences of domestic abuse in depth. The importance of these experiences emerged during data collection and analysis. This means that a weakness in the research relates to the ways in which domestic abuse was interrogated or 'measured'. Future research in this area would benefit from asking specific questions about the extent of control in relationships.

3.2 Future research

This research aimed to examine children's experiences of contact when there is domestic abuse. It did not set out to make judgments on whether contact

arrangements for individual children were positive or not, or on a court's decision about a child's best interests. It would be useful to carry out further Scottish research on the legal process and how courts reach decisions about contact and domestic abuse. This would focus on how domestic abuse is raised during proceedings, how it is reported in bar reports and how the court then deals with it in its weighing of a child's best interests.

Contact centres, perpetrator programmes and fathering programmes were not a key feature of the research. Further enquiry is necessary to understand the role that these sorts of services may have in contact arrangements. This might focus on the extent to which they address men's abusive behaviour and the role they may have in protecting children and mothers from domestic abuse post separation. However, it would be important that the research did not set these services up to be seen as a 'panacea' for problems about contact and domestic abuse.

The development of advocacy services in the Children's Hearing System might offer insight into improving children's participation in family law. Future research could examine and contrast children's experiences of advocacy with children's experiences of participating in disputes about family law.

The final area, and perhaps the most pressing, relates to the children who remained living with their father. Debates about domestic abuse and post separation abuse tend to focus only on contact. Future research should include mothers who have lost residence of their children when there is domestic abuse and, where possible, children who have remained with their fathers.

4 Concluding comments

This doctoral research makes a contribution to the areas of family law and domestic abuse. It builds on the work of academics that have focused on children and their rights in parental disputes about family law. It also builds on the work of academics that draws attention to the pernicious nature of domestic abuse and how it affects the lives of women and children.

The research has shown that however imperfect, the law provides a resolution to disputes about contact. However, what the law does not deal with is the aftermath to these decisions. This thesis has uncovered how children (and mothers) are left to deal with the consequences contact may bring and the repercussions it undoubtedly has on relationships.

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Appendix A

Information for agencies

You and Your Dad Research Project Information for Agencies

This research project aims to explore children's views and experiences of contact with a non-resident father when there has been domestic abuse. The research is a PhD project that is collaboration between Scottish Women's Aid and the University of Edinburgh's Centre for Research on Families and Relationships.

What will the research involve?

The research will use a child-centred methodology to interview children aged 8-14 years and their mothers. Children and mothers will be interviewed separately. All child participants will have experienced contact with their non-resident fathers following parental separation where there is history of domestic abuse.

In-depth interviews with children will use a range of creative instruments to help explore their perspectives and experiences of contact in an unthreatening way. In-depth interviews with mothers will focus on the processes associated with reaching current contact arrangements.

Who is carrying out the research?

Fiona Morrison will be the researcher for the project. Fiona has worked at Scottish Women's Aid for the past five years in posts relating to children and domestic abuse. She has previously experience of a number of research projects about children and domestic abuse. Prior to undertaking this study, Fiona completed a smaller scale study on the same topic with children accessing Women's Aid support services (attached is a summary of this report).

How would my agency be involved?

Agencies can play a crucial role in helping Fiona recruit children and mothers for the study. They can provide children and mothers with information about the project and ask whether they might be interested in taking part. If children and mothers are interested in taking part, agencies can to organise a meeting between them and Fiona. This would allow Fiona to explain more about the research and answer any questions that they might have.

What precautions have been taken for researching this sensitive topic?

The project has been designed to take into account the risks of researching a sensitive and potentially dangerous topic. It has received ethical approval from the University of Edinburgh's Ethical Committee and by Scottish Women's Aid. Below are some key considerations that have informed the project:

Consent

Both the child and mother's consent will be required for the project. The mother's consent will be sought for herself and her child to participate in the first instance. The child's consent will also be sought afterwards. This approach means that there will not be a situation where a child wishes to participate in the research but mother does not. Children and mothers will have opportunities to change their mind about taking part in the research throughout the process.

Confidentiality and child protection

The issue of confidentiality will be discussed with participants at the beginning of the interview. During this discussion, Fiona will make it explicit that participant's confidentiality will be guaranteed unless there are concerns about child protection.

Any child protection concern will be dealt with through the gate-keeping service's child protection policy.

If child protection concerns arise during the course of the research, Fiona will be responsible for sharing information with an appropriate agency or person (such as support worker from the gate-keeping organisation). The sharing of such information (where possible) will be negotiated with the participant, taking into account how, when and who will share this information.

Distress and damage

If a participant becomes distressed during an interview, Fiona will ask the participant if they would like a break or stop the interview. How interviews are closed will also be carefully considered. Time will be spent 'cooling down' at the end of the interview, and may involve having an informal chat with a woman or playing a game with a child. I may also follow up the next day with a telephone call to check how the participants are and thank them again for taking part.

Fiona will also provide participants with information at the end of the interviews about other sources of support. The leaflet for children will have information about Childline, the Scottish Child Law Centre and the Hideout website (a website designed specifically for children and young people who have experienced domestic abuse). The leaflet for women will have details about the Domestic Abuse Helpline, Victim Support Helpline and Scottish Women's Aid's website.

Danger

Any risk posed by perpetrators of domestic abuse will in part managed by only involving participants who no longer live with the perpetrators and who have current support mechanisms in place. Fiona will also be guided about levels of risk and any safety issues for children and mothers by gate-keeping organisations.

Can I talk with someone else about the study?

Dr Anne Stafford from the University of Edinburgh supervises the project. Please feel free to contact her should you have any concerns.

| Contact | Email | Telephone |
|------------------|--|---------------|
| Dr Anne Stafford | a.stafford@ed.ac.uk | 0131 651 6378 |

Appendix B Information leaflets for children and mothers

You and your dad

I want to hear from you!



Hi! My name is Fiona. I am a student at Edinburgh University and I also work at Scottish Women's Aid. I want to find out what children think about fighting and hurting that happens in families. I am really interested in what you think about staying in touch with your dad now that your parents have split up. I'd like to find out:

- ☐ What has it been like for you to stay in touch with your dad?
- ☐ What grown ups should think about when deciding about children staying in touch with dads?
- ☐ What you think about children staying in touch with dads when they have been hurting their families?

Why am I doing this project?

We do not know much about what children think about staying in touch with their dads when there has been hurting and fighting. This is important because it can affect lots of children. Knowing more about what you think will help adults understand what it's like for children. It will mean that they can better help other children.



What's the project for?

I am going to talk to 25 children and their mums from across Scotland. I'll use what I find out to write a report for a university degree. I will also write some reports for people like social workers and people who work in courts. The reports will help adults understand how children feel staying in touch with their dads. I will also write a report for all the children and mums who helped me with my work.



You and your dad project

What would you have to do?

If you want to take part in the project we will arrange a time for me to interview you and your mum. This is a chance for us to meet. I will ask you some questions and we can do some activities. It will help me learn about your views and ideas. I want to interview you and your mum separately. This will give you both a chance to give your views. If you want you can bring someone to our interview. For example your friend, mum, or support worker. Our interview will last no more than one hour. My interview with your mum will take a bit less time.



Who will find out what you say?

I will not use your name in my reports. This means the people who read the reports will not know that you have taken part in the project or what you have said to me. A record of our interview will go into a file called an archive. This will help people in the future understand what it's like for children. No one will be able to tell it's your record. It won't have your name on it.

Keeping you safe



If you tell me something that makes me think you or someone else is in danger, I will try to keep you safe. I might have to talk to someone like your mum or support worker. If this happens I will try and talk with you about the best thing to do before speaking to anyone.

Do I have to take part?

You do not have to take part. It is completely up to you. It won't affect your relationship with Women's Aid. If you decide to take part, you can change your mind at anytime. You won't have to answer all the questions that I ask. I will check with you during our interviews that you are still happy to take part.



Would you like to take part?

If you want to take part or have any questions you can give me a call or email. You can ask your mum or support worker to get in touch if that is easier.



0131 651 3844



fiona.morrison@scottishwomensaid.org.uk

You and your dad

Research project

Children's views of contact with fathers when there is domestic abuse

Introduction

My name is Fiona Morrison. I am a student with Edinburgh University and I work with Scottish Women's Aid. I am doing a research project on children's views of contact with fathers where there is domestic abuse. I plan to interview 25 children and their mothers from across Scotland to find out their views and experiences of contact. I would like to invite you and your child to take part in this project. This leaflet gives some information about the project and what taking part would involve.

What is the research project about?

Child contact where there is domestic abuse can be a difficult and sensitive topic. Unfortunately there is very little research on what children think about contact with their father when there is domestic abuse. This is important, as it can affect many children's lives. This research aims to find out about how children feel about contact when there has been domestic abuse. It will look at:

- ☐ What do children think about staying in touch with fathers where there is domestic abuse?
- ☐ What has it been like for them to stay in touch with their father?
- ☐ What is important for adults to think about when making decisions about contact?

What would taking part involve?

I want to interview you and your child. I would like to meet with you both first so we can get to know each other and so you can ask me any questions about the research.



If both you and your child want to take part, I will interview you first. Our interview will last no more than half an hour. I will ask you some questions about what it was like making decisions about your child having contact their father. We can organise a time and place that suits you for our interview. You can bring someone along to our interview (for example, a friend or supporter) if you'd like to.

I will then interview your child. This interview will last no more than 1 hour. During the interview we will do some activities to help him or her talk about contact in an easy way. If your child wants they can also bring someone along to the interview.

What will happen to the information that my child and I give?

The information will be used to write some reports. I will write a report for my university doctoral degree. The information may also be published in research reports to improve how courts and people like social workers help families who are in similar situations. A record of our interview will go into an archive. This will help people in the future understand what it's like for families in similar situations. This record will not identify you or your child.

Will anyone know that we have take part in the project?

I will not use you or your child's name. I will remove any information that could identify either of you. I will not tell anyone that you have been part of the research project. If during our interview I think that someone is not safe, I will try to help the person stay safe. I may have to talk to someone else like a support worker to do this. If this happens I will try to talk to you first.

Would you like to take part?

If you are interested, please get in touch with me and we can arrange a time to meet up. You could ask your support worker to get in touch with me if that is easier. If you have any questions you'd like to ask before meeting with me, give me a call or drop me an email.

0131 651 3844 or fiona.morrison@scottishwomensaid.org.uk

Please know that your decision to take part will not affect your involvement with Women's Aid. If at anytime you are worried about this project, you can talk to my supervisor.

Dr Anne Stafford

0131 651 6378

a.stafford@ed.ac.uk

Appendix C Topic guide for interviews with women

Interviews with mothers

Topic guide

Introduction

After separation there can be lots of practical things that need to be sorted out. I'd like to focus on some of the practical relating to your child and contact with their father.

1. Background information

Can we begin by you telling me a little about you and your family?

- Age
- Relationship status
- Working or not, other activities
- Number of children and their ages

2. Circumstances around separation

I'd like to first talk a bit about before you and your partner separated. Can you tell me about the circumstances that led to the separation?

- When did the separation happen?
- What triggered the separation?
- Were any agencies involved? (e.g. police, SW, WA, GPs)

Can you describe what happened when you first separated from your partner?

- Changes in living arrangements
- Involvement with agencies (e.g. police, SW, WA, CAB, GP)

I'd now like to ask you about your child(ren). Can you tell me what the child's relationship with their father was like before you separated?

How aware was the child that there were problems in your relationship with your partner?

- How aware were they of the domestic abuse that was happening?
- Did they ever get caught up in it? Can you tell me a little bit about that?

Can you tell me how the child found out about the separation?

- Who told them? When did they find out?
- How did they react?
- Did this change over time?

3. Making contact decisions

I'd like to now talk about the process for organising contact. Can you explain how contact was arranged?

- Route either to with (what prompted that decision?)

If formal:

Can you tell me about the proceedings that happened?

- Describe the nature of the proceedings (what was been asked for, when did they first begin, how long did they last?)
- Who was involved? Who instigated the proceedings?
- Was there a child welfare hearing?
- Was domestic abuse raised? (If so when, if not why?)
- What decision was made? (What reference (if any) was made to domestic abuse in the decision)
- From your perspective, what factors had the most influence on the decision made?
- Was the decision appealed? (What happened?)

How do you think the child felt in general about the proceedings?

- Views on the proceedings in general
- Views on the people involved (sheriff, solicitors)
- Decision reached

Was the child involved in the proceedings?

4. F9 form
5. Curator ad litem
6. Legally represented
7. Communicate directly with the sheriff – meeting, letter

From your perspective, how easy was it for the child to give their views?

- Were there mechanisms / things that helped the child give their views?

- Were there barriers to giving their views (e.g. opportunity, confidentiality of their views,
- Overall are there things that could be improved so that proceedings are easier for the child?
- Overall what did you think were the main difficulties for the child to be involved?

If informal:

Can you tell me about how contact arrangements were made?

- Who was involved in the decision-making?
- What factors influenced the decision?
- Were there worries / concerns about contact?

Was the child involved in making contact arrangements? Can you explain to me how they were involved?

- What were their views about contact? (e.g. desire, timing, frequency)
- Was it possible to accommodate these?

4. Contact arrangements

Can you tell me about the contact arrangements that are in place just now?

- Type of contact
- Location, frequency, length of time
- Practicalities – transport to and from, pick up / drop off

Have the arrangements changed over time? Can you tell me about the previous ones?

- Type of contact

- Location, frequency, length of time
- Practicalities – transport to and from, pick up / drop off

What were the reasons for changes to the contact arrangements?

5. Experience of contact

Can you tell me what contact has been like?

- Child's experience (feelings, quality of contact, impact)
- Siblings experience (feelings, quality of contact, impact)
- Your experience (feelings and impact)
- Concerns about contact
- Have there been any particular points of friction / violence associated with contact? (e.g. handovers) Can you tell me about these?
- Are problems with contact tied up with other issues? (e.g. residence, child support, wider family, property)
- Experiences of services that support contact (what services, views)
- Things that would make contact easier

6. Overall views about contact

Can you describe to me what you think 'good contact' for children in general is like?

And more specifically what would good contact be like for your child?

How could contact be beneficial to your child?

Appendix D Topic guides for interviews with children

Topic guide for storyboard

Introduction

So now we're going to look at a story about a boy called Sam. His mum and dad have separated. There has been domestic abuse in his family. His dad hurt his mum before they separated. For this activity we're going to look at the different things that can happen when parents separate and talk about the different members of the family.

1. Parental separation

In the first picture we've got a bit about Sam's parents splitting up.

- How do you think Sam might be feeling that his parents have split up?
- Are there things Sam might be worried about?
- Who might Sam talk to about his worries?
- What sorts of things would help Sam?
- How do you think Sam's parents will be feeling about splitting up?
- Are there things that they might be worried about?
- What sorts of things would help them?

2. Making contact decisions

So let's move on to the next picture. Here we've got a bit about making decisions so that Sam and his dad stay in touch.

- Who do you think would be involved in making this decision? (mum, dad, child, family members, courts, CHS)

- What would they think about Sam and his dad staying in touch?
- Would Sam be involved in making this decision? (if so how, if not why?)
- How much a say would Sam want to have?
- Are there things that might make it difficult for Sam to give his views?
- What sorts of things would help him give his views?
- How might Sam feel about the decision to stay in touch?

3. Having contact

Now in the last picture we've got a bit about Sam keeping in touch with his dad.

- How might Sam feel about seeing his dad on Saturdays?
- Can you think of the things he might like about seeing his dad?
- Can you think of the things he might not like about seeing his dad?
- What about his mum, how might she feel about contact?
- And his dad, how might he feel?
- What sorts of things might make contact better?

Appendix E Information leaflets about support for participants



Talking about personal stuff can be difficult. You might feel upset, or angry afterwards. Talking to someone that you trust can help.

You could try talking to your mum or your support worker about how you are feeling.

You can also call Chlidline on 0800 1111.

There are also some websites that can help.

www.achance2talk.com

www.thehideout.org.uk



Talking about personal experiences can be difficult. People sometimes feel upset, lonely or angry afterwards. It can help to talk with someone about how you are feeling.

You can contact your local Women's Aid group for confidential support and information.

Your local Women's Aid is XXX, you can contact them on XX

If you need legal advice, you can speak to Women's Aid or your local Citizens Advice Bureau. They can tell you how to find who is experienced in family law and give you information

You can also call the 24hr Domestic Abuse Helpline on 0800 027 1234.

If you or your children are in danger and you need **urgent** help phone the police – you will get the number in your phone book (under P), or if you are in immediate danger phone 999.

Appendix F Published work

TISDALL, E. K. M. & MORRISON, F. 2012. Children's participation in court proceedings when parents divorce or separate : legal constructions and lived experiences *In: FREEMAN, M. D. A. (ed.) Law and childhood studies : current legal issues 2011*. Oxford: Oxford University Press.

MORRISON, F., TISDALL, E. K. M., JONES, F. & REID, A. 2013. Child Contact Proceedings for Children Affected by Domestic Abuse A report to Scotland's Commissioner for Children and Young People. Edinburgh.
http://www.sccyp.org.uk/downloads/Adult%20Reports/Child_contact_proceedings_March_2013.pdf

MORRISON, F. and WASOFF, F. (2012) 'Child contact centres and domestic abuse - victim safety and the challenge to neutrality'. *Violence Against Women*, Special Issue on Transdisciplinarity. 18(6): 711:720
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